

REGULATORY COMMERCIAL ITEM PROVISIONS AND CLAUSES**K1.01-2 OFFEROR REPRESENTATIONS AND CERTIFICATIONS -- COMMERCIAL ITEMS (APR 1996)****(a) DEFINITIONS.** As used in this provision--

(1) **Emerging small business** means a small business concern whose size is no greater than 50 percent of the numerical size standard for the standard industrial classification code designated.

(2) **Small business concern** means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR Part 121 and size standards in this solicitation.

(3) **Small disadvantaged business concern** means a small business concern that--

(i) Is at least 51 percent unconditionally owned by one or more individuals who are both socially and economically disadvantaged or a publicly owned business having at least 51 percent of its stock unconditionally owned by one or more socially and economically disadvantaged individuals; and

(ii) Has its management and daily business controlled by one or more such individuals. This term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian Organization, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one or more of these entities, which has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian Organization and which meets the requirements of 13 CFR Part 124.

(4) **Women-owned small business concern** means a small business concern--

(i) Which is at least 51 percent owned by one or more women or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(ii) Whose management and daily business operations are controlled by one or more women.

(5) **Women-owned business concern** means a concern which is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

(b) TAXPAYER IDENTIFICATION NUMBER (TIN) (26 U.S.C. 6050M).**(i) TAXPAYER IDENTIFICATION NUMBER (TIN).**

☐ TIN: _____

☐ TIN has been applied for.

☐ TIN is not required because:

☐ Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the U.S. and does not have an office or place of business or a fiscal paying agent in the U.S.

☐ Offeror is an agency or instrumentality of a foreign government;

☐ Offeror is an agency or instrumentality of a Federal, state, or local government;

☐ Other. State basis. _____

(ii) CORPORATE STATUS.

☐ Corporation providing medical and health care services, or engaged in the billing and collecting of payments for such services;

☐ Other corporate entity;

☐ Not a corporate entity;

☐ Sole proprietorship

☐ Partnership

☐ Hospital or extended care facility described in 26 CFR 501(c)(3) that is exempt from taxation under 26 CFR 501(a).

(iii) COMMON PARENT.

☐ Offeror is not owned or controlled by a common parent.

☐ Name and TIN of common parent:

Name _____

TIN _____

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(c) Offerors must complete the following representations when the resulting contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. Check all that apply.

(1) **SMALL BUSINESS CONCERN.**The offeror represents and certifies as part of its offer that it--

☐ is
☐ is not

a small business concern.

(2) **SMALL DISADVANTAGED BUSINESS CONCERN**The offeror represents and certifies that it--

☐ is
☐ is not

a small disadvantaged business concern.

(3) **WOMEN-OWNED SMALL BUSINESS CONCERN**The offeror represents that it--

☐ is
☐ is not

a women-owned small business concern.

NOTE: Complete paragraphs (c)(4) and (c)(5) only if this solicitation is expected to exceed the simplified acquisition threshold.

(4) **WOMEN-OWNED BUSINESS CONCERN.**The offeror represents that it -

☐ is
☐ is not

a woman owned business concern.

(5) **TIE BID PRIORITY FOR LABOR SURPLUS AREA CONCERNS**If this is an invitation for bid, small business offerors may identify the labor surplus areas in which costs to be incurred on account of manufacturing or production (by offeror or first-tier subcontractors) amount to more than 50 percent of the contract price.

(6) **SMALL BUSINESS SIZE FOR THE SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM AND FOR THE TARGETED INDUSTRY CATEGORIES UNDER THE SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM**(Complete only if the offeror has certified itself to be a small business concern under the size standards for this solicitation.)

(i) **(Complete only for solicitations indicated in an addendum as being set-aside for emerging small businesses in one of the four designated industry groups (DIGs))**The offeror represents as part of its offer that it--

☐ is
☐ is not

an emerging small business.

(ii) **(Complete only for solicitations indicated in an addendum as being for one of the targeted industry categories (TICs) or four designated industry groups (DIGs))**The offeror represents and certifies as follows:

(A) The offeror's number of employees for the past 12 months (check the Employees column if size standard stated in the solicitation is expressed in terms of number of employees); or

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(B) The offeror's average annual gross revenue for the last 3 fiscal years (check the Average Annual Gross Number of Revenues column if size standard stated in the solicitation is expressed in terms of annual receipts).

(Check one of the following:)

<u>NUMBER of EMPLOYEES</u>	<u>AVERAGE ANNUAL GROSS REVENUES</u>
<input type="checkbox"/> 50 or fewer	<input type="checkbox"/> \$1 million or less
<input type="checkbox"/> 51 - 100	<input type="checkbox"/> \$1,000,001 - \$2 million
<input type="checkbox"/> 101 - 250	<input type="checkbox"/> \$2,000,001 - \$3.5 million
<input type="checkbox"/> 251 - 500	<input type="checkbox"/> \$3,500,001 - \$5 million
<input type="checkbox"/> 501 - 750	<input type="checkbox"/> \$5,000,001 - \$10 million
<input type="checkbox"/> 751 - 1,000	<input type="checkbox"/> \$10,000,001 - \$17 million
<input type="checkbox"/> Over 1,000	<input type="checkbox"/> Over \$17 million

(d) CERTIFICATIONS AND REPRESENTATIONS REQUIRED TO IMPLEMENT PROVISIONS OF EXECUTIVE ORDER 11246.

(1) **CERTIFICATIONS OF NONSEGREGATED FACILITIES**(Applies only if the contract amount is expected to exceed \$10,000). By submission of this offer, the offeror certifies that it does not and will not maintain or provide for its employees, any facilities that are segregated on the basis of race, color, religion, or national origin because of habit, local custom, or otherwise and that it does not and will not permit its employees to perform their services at any location where segregated facilities are maintained. The offeror agrees that a breach of this certification is a violation of the EQUAL OPPORTUNITY clause in the contract.

(2) **PREVIOUS CONTRACTS AND COMPLIANCE**The offeror represents that--

(i) It--

- ☐ has
☐ has not

participated in a previous contract or subcontract subject either to the EQUAL OPPORTUNITY clause of this solicitation, the clause originally contained in Section 310 of Executive Order 10925, or the clause contained in Section 201 of Executive Order 11114; and

(ii) It--

- ☐ has
☐ has not

filed all required compliance reports.

(3) **AFFIRMATIVE ACTION COMPLIANCE**.The offeror represents that--

(i) It--

- ☐ has developed and has on file
☐ has not developed and does not have on file

at each establishment, affirmative action programs required by rules and regulations of the Secretary of Labor (41 CFR Subparts 60-1 and 60-2), or

(ii) It--

☐ has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

(e) **CERTIFICATION REGARDING PAYMENTS TO INFLUENCE FEDERAL TRANSACTIONS (31 U.S.C. 1352)**. (Applies only if the contract is expected to exceed \$100,000).By submission of its offer, the offeror certifies to the best of its

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knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress on his or her behalf in connection with the award of any resultant contract.

(f) **BUY AMERICAN ACT - TRADE AGREEMENTS - BALANCE OF PAYMENTS PROGRAM CERTIFICATE.** (Applies only if DFARS clause 252.225-7007, TRADE AGREEMENTS ACT, is included in this solicitation.)

(1) The offeror certifies that--

- (i) Each end product, except the end products listed in subparagraph (2) below, is a domestic end product (as defined in the BUY AMERICAN ACT AND BALANCE OF PAYMENTS PROGRAM clause of this solicitation); and
- (ii) Components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The offeror must identify and certify all end products that are not domestic end products.

- (i) The offeror certifies that the following supplies qualify as "U.S.-made end products" but do not meet the definition of "domestic end product":

(Insert line item no.)

- (ii) The offeror certifies that the following supplies are qualifying country end products:

(Insert line item no.)

(Insert country of origin)

- (iii) The offeror certifies that the following supplies are qualify as designated country end products:

(Insert line item no.)

(Insert country of origin)

- (iv) The offeror certifies that the following supplies qualify as Caribbean Basin country end products:

(Insert line item no.)

(Insert country of origin)

- (v) The offeror certifies that the following supplies qualify as NAFTA country end products:

(Insert line item no.)

(Insert country of origin)

- (vi) The offeror certifies that the following supplies are other nondesignated country end products:

(Insert line item no.)

(Insert country of origin)

(LIST AS NECESSARY)

(3) Offers will be evaluated by giving preference to U.S.-made end products, qualifying country end products, designated country end products, NAFTA country end products, and Caribbean Basin country end products over other end products.

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(g) **BUY AMERICAN ACT - NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA) IMPLEMENTATION ACT - BALANCE OF PAYMENTS PROGRAM CERTIFICATE.** (Applies only if DFARS clause 252.225-7036, NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA) IMPLEMENTATION ACT, clause is included in this solicitation.)

(1) The offeror certifies that--

(i) Each end product, except the end products listed in subparagraph (2) below, is a domestic end product (as defined in the BUY AMERICAN ACT AND BALANCE OF PAYMENTS PROGRAM clause of this solicitation); and

(ii) Components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The offeror must identify and certify all end products that are not domestic end products.

(i) The offeror certifies that the following supplies qualify as "U.S.-made end products," but do not meet the definition of "domestic end products":

(Insert line item number)

(ii) The offeror certifies that the following supplies are qualifying country (except Canada) end products:

(Insert line item number)

(Insert country of origin)

(iii) The offeror certifies that the following supplies qualify as NAFTA country end products:

(Insert line item number)

(Insert country of origin)

(iv) The offeror certifies that the following supplies are other non-NAFTA country end products:

(Insert line item number)

(Insert country of origin)

(LIST AS NECESSARY)

(3) Offers will be evaluated by giving preference to U.S.-made end products, qualifying country end products, or NAFTA country end products over other end products.

(h) **CERTIFICATION REGARDING DEBARMENT, SUSPENSION OR INELIGIBILITY FOR AWARD (EXECUTIVE ORDER 12549).**

The offeror certifies, to the best of its knowledge and belief, that--

(1) The offeror and/or any of its principals

[] are

[] are not

presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency, and

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- (2) ☐ Have or
☐ Have not,

within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Federal, state or local government contract or subcontract ; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and

- ☐ are or
☐ are not

presently indicted for, or otherwise criminally or civilly charged by a Government entity with, commission of any of these offenses.

(i) PROCUREMENT INTEGRITY CERTIFICATION (41 U.S.C. 423)(Applies only if the contract is expected to exceed \$100,000.)

I, the undersigned, am the officer or employee responsible for the preparation of this offer. I certify to the best of my knowledge and belief, that either--

- ☐ I have no information, or
☐ I have disclosed information to the Contracting Officer

concerning a violation or possible violation of subsection (a), (b), (d), or (f) of 41 U.S.C. 423, Procurement Integrity, or its implementing regulations that may have occurred during the conduct of this procurement.

Signature of the officer or employee responsible for the offer and date.

(FAR 52.212-3)

K1.05 OFFEROR REPRESENTATIONS AND CERTIFICATIONS -- COMMERCIAL ITEMS (OCT 1995)

(a) DEFINITIONS. As used in this clause--

(1) **Foreign person** means any person other than a United States person as defined in Section 16(2) of the Export Administration Act of 1979 (50 U.S.C. App. Sec 2415).

(2) **United States person** is defined in Section 16(2) of the Export Administration Act of 1979 and means any United States resident or national (other than an individual resident outside the United States and employed by other than a United States person), any domestic concern (including any permanent domestic establishment of any foreign concern), and any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern which is controlled in fact by such domestic concern, as determined under regulations of the President.

(b) CERTIFICATION. By submitting this offer, the offeror, if a foreign person, company, or entity, certifies that it--

- (1) Does not comply with the Secondary Arab Boycott of Israel; and
(2) Is not taking or knowingly agreeing to take any action, with respect to the Secondary Boycott of Israel by Arab countries, which 50 U.S.C. App. Sec 2407(a) prohibits a United States person from taking.

(c) REPRESENTATION OF EXTENT OF TRANSPORTATION BY SEA. (This representation does not apply to solicitations for the direct purchase of ocean transportation services.)

(1) The offeror shall indicate by checking the appropriate blank in paragraph (c)(2) of this provision whether transportation of supplies by sea is anticipated under the resultant contract. The term **supplies** is defined in the TRANSPORTATION OF SUPPLIES BY SEA clause of this solicitation.

(2) **REPRESENTATION.** The offeror represents that it--

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[] Does anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.

[] Does not anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.

(3) Any contract resulting from this solicitation will include the TRANSPORTATION OF SUPPLIES BY SEA clause. If the offeror represents that it will not use ocean transportation, the resulting contract will also include the Defense FAR Supplement clause at 252.247-7024, NOTIFICATION OF TRANSPORTATION OF SUPPLIES BY SEA.

(DFARS 252.212-7000)

L2.05-6 INSTRUCTIONS TO OFFERORS - COMMERCIAL ITEMS (COAL) (DFSC JUN 1996)

(a) STANDARD INDUSTRIAL CLASSIFICATION (SIC) CODE AND SMALL BUSINESS SIZE STANDARD.

The SIC code and small business size standard for this acquisition appear in Block 10 of the solicitation cover sheet (SF 1449). However, the small business size standard for a concern which submits an offer in its own name, but which proposes to furnish an item which it did not itself manufacture, is 500 employees.

(b) **SUBMISSION OF OFFERS.** Submit signed and dated offers to the office specified in this solicitation at or before the exact time specified in this solicitation. Offers may be submitted on the SF 1449, letterhead stationery, or as otherwise specified in the solicitation. As a minimum, offers must show--

- (1) The solicitation number;
- (2) The time specified in the solicitation for receipt;
- (3) The name, address, and telephone number of the offeror;
- (4) A technical description of the items being offered in sufficient detail to evaluate compliance with the requirements in the solicitation. This may include product literature, or other documents, if necessary;
- (5) Terms of any express warranty;
- (6) Price and any discount terms;
- (7) "Remit to" address, if different than mailing address;
- (8) A completed copy of the representations and certifications at FAR 52.212-3;
- (9) Acknowledgment of solicitation amendments;
- (10) Past performance information, when included as an evaluation factor, to include recent and relevant contracts for the same or similar items and other references (including contract numbers, points of contact with telephone numbers and other relevant information); and
- (11) If the offer is not submitted on the SF 1449, include a statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation. Offers that fail to furnish required representations or information, or reject the terms and conditions of the solicitation may be excluded from consideration.

(c) **PERIOD FOR ACCEPTANCE OF OFFERS.** See Addendum 1.

(d) **PRODUCT SAMPLES.** When required by the solicitation, product samples shall be submitted at or prior to the time specified for receipt of offers. Unless otherwise specified in this solicitation, these samples shall be submitted at no expense to the Government, and returned at the sender's request and expense, unless they are destroyed during preaward testing.

(e) **MULTIPLE OFFERS.** Offerors are encouraged to submit multiple offers presenting alternative commercial items for satisfying the requirements of this solicitation. Each offer submitted will be evaluated separately.

(f) **LATE OFFERS.** See Addendum 1.

(g) **CONTRACT AWARD (not applicable to Invitation for Bids)** The Government intends to evaluate offers and award a contract after oral or written discussions with offerors. However, the offeror's initial offer should contain the offeror's best terms from a price and technical standpoint. The Government reserves the right not to conduct discussions as determined by the Contracting Officer. The Government may reject any or all offers if such action is in the public interest; accept other than the lowest offer; and waive informalities and minor irregularities in offers received.

(h) **MULTIPLE AWARDS.** The Government may accept any item or group of items of an offer, unless the offeror qualifies the offer by specific limitations. Unless otherwise provided in the Schedule, offers may be submitted for quantities less than those specified. The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit prices offered, unless the offeror specifies otherwise in the offer.

L2.05-6 CONT'D

(i) **AVAILABILITY OF REQUIREMENTS DOCUMENTS CITED IN THE SOLICITATION.** this solicitation covers requirements for U.S. Forces in Germany, see Addendum 1. Otherwise, see Schedule.
(FAR 52.212-1, tailored)

II.03-4 CONTRACT TERMS AND CONDITIONS -- COMMERCIAL ITEMS (COAL) (DFSC JUN 1996)

(a) **INSPECTION/ACCEPTANCE.** See Addendum 2.

(b) **ASSIGNMENT.** The Contractor or its assignee's right to be paid amounts due as a result of performance of this contract, may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. 3727).

(c) **CHANGES.** See Addendum 2.

(d) **DISPUTES.** This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).

Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, DISPUTES, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) **DEFINITIONS.** The clause at FAR 52.202-1, DEFINITIONS, is incorporated herein by reference. If this contract covers requirements for U.S. Forces in Germany, also see Addendum 2 for additional definitions.

(f) **EXCUSABLE DELAYS.** The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the control of the Contractor and without its fault or negligence, such as acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence. Also see Addendum 2.

(g) **INVOICE.** The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include--

- (1) Name and address of the Contractor;
- (2) Invoice date;
- (3) Contract number, contract line item number, and, if applicable, the order number;
- (4) Description, quantity, unit of measure, unit price, and extended price of the item delivered;
- (5) Shipping number and date of shipment including the bill of lading number and weight of shipment if shipped on Government bill of lading;
- (6) Terms of any prompt payment discount offered;
- (7) Name and address of official to whom payment is to be sent; and
- (8) Name, title, and phone number of person to be notified in event of defective invoice.

Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) Circular A-125, Prompt Payment.

(h) **PATENT INDEMNITY.** The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

(i) **PAYMENT.** Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract. The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) Circular A-125, Prompt Payment. Payment under this contract may be made by the Government either by check, electronic funds transfer, or the Automated Clearing House, at the option of the Government.

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In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purposes of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the date on which an electronic funds transfer was made. Also See Addendum 2.

(j) **RISK OF LOSS.** Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon--

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

(k) **TAXES.** See Addendum 2.

(l) **TERMINATION FOR THE GOVERNMENT'S CONVENIENCE** The Government reserves the right to terminate this contract, or any part thereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms and conditions of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purposes. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(m) **TERMINATION FOR CAUSE.** The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(n) **TITLE.** Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

(o) **WARRANTY.** The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(p) **LIMITATION OF LIABILITY.** Except as otherwise provided by an express or implied warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

(q) **OTHER COMPLIANCES.** The Contractor shall comply with all applicable Federal, State, and local laws, executive orders, rules, and regulations applicable to its performance under this contract.

(r) **COMPLIANCE WITH LAWS UNIQUE TO GOVERNMENT CONTRACTS** The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 327 et seq., Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986, 41 U.S.C. 251 related to whistle blower protections, and 49 U.S.C. 40118, Fly American.

(s) **ORDER OF PRECEDENCE.** Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

(1) The schedule of supplies/services;

(2) The Assignments; Disputes, Payments; Invoices; Other Compliances; and Compliance with Laws Unique to Government Contracts paragraphs of this clause;

(3) The clause at 52.212-5;

(4) Addenda to this solicitation or contract, including any license agreements for computer software;

(5) Solicitation provisions if this is a solicitation;

(6) Other paragraphs of this clause;

(7) Standard Form 1449;

(8) Other documents, exhibits, and attachments; and

(9) The specification.

(FAR 52.212-4, tailored)

I1.04 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS - COMMERCIAL ITEMS (OCT 1995)

(a) The Contractor agrees to comply with the following FAR clauses, which are incorporated in this contract by reference, to implement provisions of law or executive orders applicable to acquisitions of commercial items:

- (1) 52.222-3, Convict Labor (E.O. 11755); and
- (2) 52.233-3, Protest After Award (31 U.S.C. 3553 and 40 U.S.C. 759).

(b) The Contractor agrees to comply with the FAR and FIRM clauses in this paragraph (b) which the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or executive orders applicable to acquisitions of commercial items or components:

(Contracting Officers shall check as appropriate)

- 53g
- ☒ (1) **52.203-6, Restrictions on Subcontractor Sales to the Government with Alternate I (41 U.S.C. and 10 U.S.C. 2402).**
 - ☒ (2) **52.203-10, Price or Fee Adjustment for Illegal or Improper Activity (41 U.S.C. 423).**
 - ☒ (3) **52.219-8, Utilization of Small, Small Disadvantaged, and Women-Owned Small Business Concerns 15 U.S.C. 637(d)(2) and (3)).**
 - ☒ (4) **52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (15 U.S.C. 637 (d)(4)).**
 - ☒ (5) **52.219-14, Limitation on Subcontracting (15 U.S.C. 637(a)(14)).**
 - ☒ (6) **52.222-26, Equal Opportunity (E.O. 11246).**
 - ☒ (7) **52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans (38 U.S.C. 4212).**
 - ☒ (8) **52.222-36, Affirmative Action for Handicapped Workers (29 U.S.C. 793).**
 - ☒ (9) **52.222-37, Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212).**
 - ☐ (10) 52.225-3, Buy American Act - Supplies (41 U.S.C. 10).
 - ☐ (11) 52.225-9, Buy American Act - Trade Agreements Act - Balance of Payments Program (41 U.S.C. 10, 19 U.S.C. 2501-2582).
 - ☐ (12) 52.225-17, Buy American Act - Supplies Under European Community Sanctions for End Products (E.O. 12849).
 - ☐ (13) 52.225-18, European Community Sanctions for End Products (E.O. 12849).
 - ☐ (14) 52.225-19, European Community Sanctions for Services (E.O. 12849).
 - ☐ (15) 52.225-21, Buy American Act - North American Free Trade Agreement Implementation Act - Balance of Payments Program (41 U.S.C. 10, Pub. L. 103-187).
 - ☐ (16) 52.247-64, Preference for Privately Owned U.S. Flag Commercial Vessels (46 U.S.C. 1241).
 - ☐ (17) 201-39.5202-3, Procurement Authority (FIRM).

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(This acquisition is being conducted under _____ delegation of GSA's exclusive procurement authority for FIP resources. The specific GSA DPA case number is _____.

(c) The Contractor agrees to comply with FAR clauses in this paragraph (c), applicable to commercial services, which the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or executive orders applicable to acquisitions of commercial items or components:

(Contracting Officer check as appropriate)

- ☐ (1) 52.222-41, Service Contract Act of 1965, as amended (41 U.S.C. 351, et seq.).
- ☐ (2) 52.222-42, Statement of Equivalent Rates for Federal Hires (29 U.S.C. 206 and 41 U.S.C. 351 et seq.).
- ☐ (3) 52.222-43, Fair Labor Standards Act and Service Contract Act - Price Adjustment (Multiple Year and Option Contracts) (29 U.S.C. 206 and 41 U.S.C. 351 et seq.).
- ☐ (4) 52.222-44, Fair Labor Standards Act and Service Contract Act - Price Adjustment (29 U.S.C. 206 and 41 U.S.C. 351 et seq.).
- ☐ (5) 52.222-47, SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreement (CBA) (41 U.S.C. 351 et seq.).

(d) **COMPTROLLER GENERAL EXAMINATION OF RECORD** The Contractor agrees to comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at 52.215-2, AUDIT AND RECORDS - NEGOTIATION.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the DISPUTES clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c) and (d) of this clause, the Contractor is not required to include any FAR clause, other than those listed below (and as may be required by any addenda to this paragraph to establish the reasonableness of prices under Part 15), in a subcontract for commercial items or commercial components:

- (1) 52.222-26, Equal Opportunity (E.O. 11246);
- (2) 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans (38 U.S.C. 2012(a)); and
- (3) 52.222-36, Affirmative Action for Handicapped Workers (29 U.S.C. 793).
- (4) 52.247-64, Preference for Privately Owned U.S. - Flag Commercial Vessels (46 U.S.C. 1241) (flow down not required for subcontracts awarded beginning May 1, 1996).

(FAR 52.212-5)

II.05 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS APPLICABLE TO DEFENSE ACQUISITIONS OF COMMERCIAL ITEMS (OCT 1995)

(a) The Contractor agrees to comply with the following clauses, which are included in this contract by reference to implement provisions of law or Executive Orders applicable to acquisitions of commercial items or components:

- ☐ 252.247-7023 Transportation of Supplies by Sea

II.05 CONT'D

(b) The Contractor agrees to comply with any clause that is checked on the following list of clauses which, if checked, is included in this contract by reference to implement provisions of law or Executive Orders applicable to acquisitions of commercial items or components.

	<input type="checkbox"/>	252.205-7000	Provision of Information to Cooperative Agreement Holders, 10 U.S.C. 2416
	<input type="checkbox"/>	252.206-7000	Domestic Source Restriction, 10 U.S.C. 2304
	<input type="checkbox"/>	252.219-7001	Notice of Partial Small Business Set-Aside with Preferential Consideration for Small Disadvantaged Business Concerns, 10 U.S.C. 2301 note
	<input type="checkbox"/>	252.219-7002	Notice of Small Disadvantaged Business Set-Aside, 15 U.S.C. 644
(DoD)	<input checked="" type="checkbox"/>	252.219-7003	Small Business and Small Disadvantaged Business Subcontracting Plan Contracts), 15 U.S.C. 637
	<input checked="" type="checkbox"/>	252.219-7005	Incentive for Subcontracting with Small Business Businesses, Small Disadvantaged Businesses, Historically Black Colleges and Universities and Minority Institutions, 10 U.S.C. 2301 note
	<input type="checkbox"/>	252.219-7006	Notice of Evaluation Preference for Small Disadvantaged Business Concerns, 15 U.S.C. 644
	<input checked="" type="checkbox"/>	252.225-7001	Buy American Act and Balance of Payments Program, 41 U.S.C. 10, E.O. 10582
	<input checked="" type="checkbox"/>	252.225-7007	Trade Agreements Act, 19 U.S.C. 2501-2582
	<input type="checkbox"/>	252.225-7012	Preference for Certain Domestic Commodities
	<input type="checkbox"/>	252.225-7014	Preference for Domestic Specialty Metals. - 10 U.S.C. 2341 note
	<input type="checkbox"/>	252.225-7015	Preference for Domestic Hand or Measuring Tools. - 10 U.S.C. 2241 note
	<input type="checkbox"/>	252.225-7017	Preference for United States and Canadian Vices and Machine Tools, 10 U.S.C. 2534(c)(2)
	<input type="checkbox"/>	252.225-7027	Limitation on Sales Commissions and Fees, 12 U.S.C. 2779
	<input type="checkbox"/>	252.225-7028	Exclusionary Policies and Practices of Foreign Governments, 22 U.S.C. 2755
	<input type="checkbox"/>	252.225-7029	Restriction on Acquisition of Air Circuit Breakers, 10 U.S.C. 2534(a)(93)
	<input type="checkbox"/>	252.225-7036	North American Free Trade Agreement Implementation Act.
	<input type="checkbox"/>	252.227-7015	Technical Data Commercial Items, 10 U.S.C. 2320
	<input type="checkbox"/>	252.227-7037	Validation of Restrictive Markings on Technical Data, 10 U.S.C. 2321
	<input checked="" type="checkbox"/>	252.233-7000	Certification of Claims and Requests for Adjustment or Relief, 10 U.S.C. 2410
	<input type="checkbox"/>	252.242-7002	Submission of Commercial Freight Bills for Audit, 31 U.S.C. 3726
	<input type="checkbox"/>	252.247-7024	Notification of Transportation of Supplies by Sea, 10 U.S.C. 2631
	<input type="checkbox"/>	252.249-7001	Notification of Substantial Impact on Employment, 10 U.S.C. 2501 note.

(DFARS 252.212-7001)

ADDENDUM #1**REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF OFFERORS****K33 AUTHORIZED NEGOTIATORS (APR 1984)**

The offeror or quoter represents that the following persons are authorized to negotiate on its behalf with the Government in connection with this request for proposals or quotations:
(FAR 52.215-11)

K38 AUTHORIZATION AND MINE DESCRIPTION FORM (DFSC FEB 1985)

(a) For each mine from which the offeror proposes to supply coal under this solicitation, the offeror is required to submit WITH THE OFFER one properly-executed DFSC Form 4.23, AUTHORIZATION AND MINE DESCRIPTION (MAY 84), except as provided in paragraph (b) below. The Mine Form is attached to this solicitation. It shall be completed and signed by an authorized official of the Operating Company. The "authorized official of the Operating Company" means that individual who is authorized to commit the coal for sale on behalf of the Operating Company and/or the Mine Owner. The Government reserves the right to reject any offer if the applicable Mine Form has not been received with the offer. Further, the Government reserves the right to verify the statements made in the Mine Form prior to award and, in the case of erroneous statements, an offer based on that Mine Form

may be rejected. In the event that the Contractor requests that additional mine(s) be added after contract award, one properly-executed Mine Form for each mine shall be furnished by the Contractor at the time of this request.

(b) In the event that the proposed mine is owned by the offeror or by a subsidiary, division, or affiliate of the offeror, DFSC Form 4.23, AUTHORIZATION AND MINE DESCRIPTION (MAY 84), will not be required for that mine. However, in such case, the offeror shall state below the mine(s) exempted by this paragraph (b):

(c) Offerors who offer coal from tipples or preparation plants must clearly identify the mine source(s) and must provide a properly executed AUTHORIZATION AND MINE DESCRIPTION form signed by an authorized official of the Operating Company and/or the Mine Owner providing the coal.

(DFSC 52.208-9F01)

K85 DISCLOSURE OF OWNERSHIP OR CONTROL BY THE GOVERNMENT OF A TERRORIST COUNTRY (SEP 1994)

(a) **DEFINITIONS.** As used in this provision--

(1) **Government of a terrorist country** includes the state and the government of a terrorist country, as well as any political subdivision, agency, or instrumentality thereof.

(2) **Terrorist country** means a country determined by the Secretary of State, under Section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(i)(A)), to be a country the government of which has repeatedly provided support

K85 CONT'D

for acts of international terrorism. As of the date of this provision, terrorist countries include Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria.

(3) **Significant interest** as used in this provision means--

(i) Ownership of or beneficial interest in 5 percent or more of the firm's or subsidiary's securities. Beneficial interest includes holding 5 percent or more of any class of the firm's securities in "nominee shares," "street names," or some other method of holding securities that does not disclose the beneficial owner;

(ii) Holding a management position in the firm, such as director or officer;

(iii) Ability to control or influence the election, appointment, or tenure of directors or officers in the firm;

(iv) Ownership of 10 percent or more of the assets of a firm such as equipment, buildings, real estate, or other tangible assets of the firm; or

(v) Holding 50 percent or more of the indebtedness of a firm.

(b) **PROHIBITION ON AWARD.** In accordance with 10 U.S.C. 2327, no contract may be awarded to a firm or subsidiary of a firm if the government of a terrorist country has a significant interest in the firm or subsidiary, unless a waiver is granted by the Secretary of Defense.

(c) **DISCLOSURE.**

If the government of a terrorist country has a significant interest in the offeror or a subsidiary of the offeror, the offeror shall disclose such interest in an attachment to its offer. If the offeror is a subsidiary, it shall also disclose any significant interest each government has in any firm that owns or controls the subsidiary. The disclosure shall include--

(1) Identification of each government holding a significant interest; and

(2) A description of the significant interest held by each Government.

(DFARS 252.209-7001)

INSTRUCTIONS, CONDITIONS AND NOTICES TO BIDDERS/OFFERORS OR QUOTERS

L1.02 PROPOSAL ACCEPTANCE PERIOD (DFSC NOV 1991)

(a) "Acceptance period," as used in this provision, means the number of calendar days available to the Government for awarding a contract from the date specified in this solicitation for receipt of proposals.

(b) This provision supersedes any language pertaining to the acceptance period that may appear elsewhere in this solicitation.

(c) The Government requires a minimum acceptance period of 100 calendar days.
(DFSC 52.204-9F03)

(d) If the offeror specifies an acceptance period which is less than that required by the Government, such offer may be rejected.

(e) The offeror agrees to execute all that it has undertaken to do, in compliance with its offer, if such offer is acceptable to the Government and is accepted within the acceptance period stated in paragraph (c) above or within any extension thereof which has been agreed to by the offeror.

L2.01-1 PROPOSAL PREPARATION INSTRUCTIONS AND PAST PERFORMANCE SUBMISSION (DFSC JUN 1996) (REV)

(a) **THE OFFER.** The offer (proposal) shall consist of the following items:

(1) **Standard Form (SF) 1449** Solicitation/Contract Order for Commercial Items, blocks 12, 17 through 24, and 30.

(2) **Schedule clause.** The offeror shall insert its proposed unit prices for each contract line item in the spaces provided in the SUPPLIES TO BE FURNISHED clause or as specified in the solicitation.

L2.01-1 CONT'D

(3) **Certification Package.** The offeror shall complete the representations, certifications, and other statements of offerors contained in the Certification Package enclosed with this solicitation. The clauses/provisions found in the Certification Package are duplicated in the basic solicitation.

(4) **Other Required Documents.** The offeror shall submit all other documents required by the terms and conditions of this solicitation, e.g., subcontracting plans, supply commitment letters, or mine authorizations, as applicable.

(5) **Exceptions.**

(i) Any exceptions the offeror takes to the terms and conditions of the solicitation must be submitted with the offer. Only exceptions detailed in the offer will be treated as exceptions to the terms and conditions of the solicitation. Any exceptions taken by the offeror will be considered by the Government and either accepted or rejected. Exceptions that are accepted by the Government will be incorporated into any resultant contract; exceptions that are rejected by the Government must be withdrawn by the offeror or the offer will be rejected.

(ii) If the offeror does not take any exceptions, completion of blocks 12, 17 through 24, and 30 of the SF 1449 signifies the offeror's agreement to the terms and conditions contained in the solicitation.

(b) **PAST PERFORMANCE SUBMISSION.**

(1) In addition to its offer, each offeror must provide a Contractor Performance Data Sheet (CPDS), which will not form a part of the offer or any resulting contract. The offeror shall fully complete the CPDS contained in the solicitation/certification package (Attachment 2) with information concerning all contracts and/or subcontracts performed during the last 2 (fill in) years

for the same or similar work required by the solicitation (in terms of scope, complexity, types of products, quantities, delivery modes, performance periods, delivery schedules, quality requirements, etc.) The Government may choose not to consider information submitted by the offeror about contracts and/or subcontracts that are outside the time period specified above. However, the Government reserves the right to consider contract and/or subcontract information outside this specified time period., submitted either by the offeror or obtained from other sources

(2) The contracts and/or subcontracts submitted should have a minimum of one year's performance history. The contracts may include efforts undertaken on behalf of the Defense Fuel Supply Center, other Federal agencies (including those performed for non-DoD activities, quasi-government organizations, State or local governments), and/or private industry. By submitting the CPDS, the offeror agrees to permit the Government's representatives to contact the references listed and inquire as to the past performance of the offeror. However, the Government reserves the right not to contact all of the listed references and to use any other data available to the Government in the evaluation of the offeror's past performance.

(3) If the offeror determines that it has not performed any contracts that are relevant to the solicitation, the offeror should state this fact. Failure to complete or submit the CPDS may be considered certification that the offeror has no relevant past performance.

(c) **SOCIOECONOMIC PLAN (APPLICABLE TO LARGE, SMALL, SMALL DISADVANTAGED, AND WOMEN-OWNED BUSINESSES)** The offeror must provide the following:

(1) A description of its efforts to ensure that small, small disadvantaged, and women-owned small business concerns will have an equal opportunity to compete for subcontracts under any resultant contract. The description should include the offeror's current and planned proposed range of services, supplies, and any other support that will be provided to the offeror by small, small disadvantaged, and women-owned small business concerns. Specific names of any known subcontractors should be included.

(2) A description of any future plans the offeror has for developing additional subcontracting opportunities for small, small disadvantaged, and women-owned small business concerns during the contract period.

(3) The proportion of the offeror's proposal, as a percentage of dollars, that will be subcontracted to small, small disadvantaged, and women-owned businesses.

(4) The type of performance data regarding its support of small, small disadvantaged, and women-owned small businesses that will be accumulated by the offeror during contract performance. The offeror shall also provide the name and title of the individual principally responsible for ensuring company support to such firms.

L2.11-1 FACSIMILE OFFERS (DFSCAUG 1996)

(a) **DEFINITION. Facsimile offer,** as used in this solicitation, means an offer, modification of an offer, or withdrawal of an offer that is transmitted to and received by the Government via electronic equipment that communicates and reproduces both printed and handwritten material.

(b) Offerors may submit facsimile offers as responses to this solicitation. These responses must arrive at the place, and by the time, specified in the solicitation.

(c) Facsimile offers that fail to furnish required representations or information, or that reject any of the terms, conditions, and provisions of the solicitation, may be excluded from consideration.

L2.11-1 CONT'D

- (d) Facsimile offers must contain the required signatures.
- (e) The Government reserves the right to make award solely on the facsimile offer. However, if requested to do so by the Contracting Officer, the apparently successful offeror agrees to promptly submit the complete, original, signed offer, or a hard copy thereof, to be received within 10 days of the opening/closing date.
- (f) Facsimile receiving data and compatibility characteristics are as follows:
 - (1) Telephone number of receiving facsimile equipment: (703) 767-8506.
 - (2) The Defense Fuel Supply Center's receiving equipment is a Xerox Telecopier 7033. The receiving speed coincides with the applicable sending machine. Each FAX is required to include the following information on a cover sheet or at the top of the first page:

TO: (Name and office code, i.e., Mary Smith, DFSC-PH)
 FROM: (Originator's name, complete company name and address)
 Verification number: (Originator phone number and FAX number)
 Description: (Solicitation number)
 Number of pages:

- (g) If the offeror chooses to transmit a facsimile offer, the Government will not be responsible for any failure attributable to the transmission or receipt of the facsimile offer including, but not limited to, the following:
 - (1) Receipt of garbled or incomplete offer.
 - (2) Availability or condition of the receiving facsimile equipment.
 - (3) Incompatibility between the sending and receiving equipment.
 - (4) Delay in transmission or receipt of offer.
 - (5) Failure of the offeror to properly identify the offer.
 - (6) Illegibility of offer.
 - (7) Security of offer data.

L3.02 LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF PROPOSALS (JUL 1995)

- (a) Any proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it --
 - (1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);
 - (2) Was sent by mail or, if authorized by the solicitation, was sent by telegram or via facsimile and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation;
 - (3) Was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and U.S. Federal holidays;
 - (4) Was transmitted through an electronic commerce method authorized by the solicitation and was received by the Government not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals; or
 - (5) Is the only proposal received.
- (b) Any modification of a proposal or quotation, except a modification resulting from the Contracting Officer's request for "best and final" offer, is subject to the same conditions as in subparagraphs (a)(1), (2) and (3) of this provision.
- (c) A modification resulting from the Contracting Officer's request for "best and final" offer received after the time and date specified in the request will not be considered unless received before award and the late receipt is due solely to mishandling by the Government after receipt at the Government installation.
- (d) The only acceptable evidence to establish the date of mailing of a late proposal or modification sent either by U.S. Postal Service registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date and the proposal, quotation, or modification shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees

L3.02 CONT'D

of the U.S. or Canadian Postal Service on the date of mailing. Therefore, offerors or quoters should request the postal clerk to place a legible hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

(e) The only acceptable evidence to establish the time of receipt at the Government installation is the time/date stamp of that installation on the proposal wrapper or other documentary evidence of receipt maintained by the installation.

(f) The only acceptable evidence to establish the date of mailing of a late offer, modification or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph (d) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, offerors or quoters should request the postal clerk to place a legible hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

(g) Notwithstanding paragraph (a) of this provision a late modification of an otherwise successful proposal that makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

(h) Proposals may be withdrawn by written notice or telegram (including mailgram) received at any time before award. If the solicitation authorizes facsimile proposals, proposals may be withdrawn via facsimile received at any time before award, subject to the conditions specified in the provision entitled "FACSIMILE PROPOSALS." Proposals may be withdrawn in person by an offeror or an authorized representative, if the representative's identity is made known and the representative signs a receipt for the proposal before award.

(FAR 52.215-10)

L21.02 PROCEDURES FOR AWARDING FAILED 8(a) RESERVATIONS FOR COAL PROCUREMENTS (DFSC OCT 1993)

(a) The following requirements have been reserved for negotiation under the provisions of section 8(a) of the Small Business Act (Public Law 85-536). This quantity represents fifty percent of the requirements for the installation(s) listed.

<u>ITEM</u>	<u>INSTALLATION</u>	<u>QUANTITY</u>
0002	Red River Army Depot Texarkana, TX	10,250 Net Tons
0004	Rock Island Arsenal Rock Island, IL	15,000 Net Tons

(b) If this reservation does not result in a contract with the Small Business Administration, these items will be negotiated with the applicable bidders under this solicitation in accordance with the following procedures:

(1) DETERMINING ELIGIBILITY.

(i) To be eligible to participate in the failed 8(a) reserved portion of this procurement, a concern must have submitted a responsive offer on the unrestricted items.

(ii) The Government reserves the right not to award to any concern who submitted a token offer or attempted by any other device to secure an unfair advantage over other offerors.

(2) DETERMINING PRIORITY FOR AWARD.

Labor surplus concerns and other business concerns eligible under (1) above will participate in the following order of priority:

Group 1. Labor Surplus Area (LSA) concerns which are also small business concerns.

Group 2. Other LSA concerns.

Group 3. Small business concerns which are not LSA concerns.

Group 4. Other business concerns which are not LSA concerns.

Within each of the above groups, offers will be requested from concerns in the order of their offers, beginning with the lowest responsive offer. Concerns may offer less than the failed portion(s).

L21.02 CONT'D**(3) DETERMINING THE AWARD PRICE.****(i) GENERAL RULE.**

Subject to the exceptions listed in (ii) and (iii) below, awards of the failed portions shall be made at the highest unit price for each item awarded under the Schedule, adjusted to reflect transportation, rent-free use of Government property, and other cost factors considered in evaluating bids on the Schedule portion. The award price shall be subject to the same discount terms used in the evaluation of the highest award price for a Schedule item.

(ii) AWARD PRICE INVOLVING FOREIGN END PRODUCTS.

(A) When the highest award price on the Schedule item is established by an award for a foreign end product, the award price for the failed portion shall be the award price on the Schedule item as adjusted in evaluating the offer submitting the foreign end product for award under applicable Buy American procedures, except for awards on the failed portion to concerns offering foreign end products, in which case the general rule applies.

(B) Award to a concern offering a foreign end product when the highest award price on the Schedule portion is established by a domestic source end product shall be at a price which, after application of the evaluation factors used under Buy American procedures for determining eligibility of a foreign end product for award, is equal to the highest award price on the Schedule portion, adjusted to reflect transportation and other factors considered in evaluating the offers.

(iii) OBTAINING OFFERS AND PROCESSING AWARDS.

(A) When an unaccepted low offer is not involved -- If there is no unaccepted low offer meeting the criteria in (B) below, eligible concerns in the order of priority in (2) above will be requested to offer on the failed quantity at the highest unit price awarded on the Schedule portion. Concerns may offer less than the total failed portion, provided that if any part of the failed portion is not taken by eligible concerns in the first 3 groups, awards will be made in Group 4 beginning with the lowest offeror on the Schedule portion at prices no higher than the lowest price awarded on the Schedule portion.

(B) When an accepted low offer is involved -- If (a) a responsive offer is submitted on the Schedule portion at a unit price which, when adjusted, is lower than the adjusted highest unit price awarded on the Schedule portion, but cannot be accepted (e.g., because of "all-or-none" or other quantity limitations, or because the bidder is nonresponsive), and (b) at the time of negotiation for the failed portion, the offer could be accepted (e.g., because the failed quantity is large enough that the quantity limitations could be complied with, or because the bidder has now become responsible), then the following procedures shall be followed:

Step One. Eligible concerns (in the order of priority in (2) above, excluding Group 4 firms) will be requested to offer, at the adjusted unit price of the unaccepted bid, a quantity of the failed portion equal to the quantity of the unaccepted offer.

Step Two. If no eligible concern will offer to take the entire quantity of the unaccepted offer, then all eligible concerns (in the order of priority in (2) above, excluding Group 4 firms) shall be requested to offer on any lesser portion at the same price, until either the entire quantity is awarded or all eligible concerns refuse any further portions of such quantity.

Step Three. Steps Four, Five, and Six are applicable to the remaining failed portion regardless of whether any quantity under Step Two is not awarded after all eligible concerns have been afforded an opportunity to offer on the unaccepted quantity. However, the concern which submitted the unaccepted offer shall be eliminated from consideration under Step Four and Step Five, for award at higher prices, unless that concern first accepts a quantity of the failed portion equal to the entire quantity of its unaccepted offer, at the adjusted price of its offer.

Step Four. In case there is more than one unaccepted offer which meets the conditions of (a) and (b) above, Steps One, Two, and Three above shall be applied with respect to the quantities of each such offer in turn, from lowest price to highest.

Step Five. Eligible concerns in the order of priority in (2) above will be requested to offer at the highest unit price awarded on the Schedule portion on any quantity of the failed portion remaining after Steps One, Two, and Four have been completed, provided that if any of the failed portion is not taken by eligible concerns in the first 3 groups, awards will be made in Group 4 beginning with the lowest offeror on the Schedule portion at prices no higher than the lowest price awarded on the Schedule portion.

L21.02 CONT'D

Step Six. If the entire failed portion is not taken by eligible concerns pursuant to Steps One through Five above, the failed portion is automatically dissolved and such unawarded portion may be procured by advertising or negotiation, as appropriate, in accordance with existing regulations.

(4) DEFINITIONS.

(i) Labor Surplus Area. The term "labor surplus area" means a geographic area which at the time of award is classified as such by the Secretary of Labor in the Department of Labor "Listing of Eligible Labor Surplus Areas Under Defense Manpower Policy 4A and Executive Order 10582."

(ii) Labor Surplus Area Concerns. The term "labor surplus area concern" means a concern that agrees to perform or cause to be performed a substantial proportion of a contract in labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in labor surplus areas if the aggregate costs that will be incurred by the concern of its first tier subcontractors on account of manufacturing or production performed in labor surplus areas amount to more than 50 percent of the contract price.

(iii) A "small business concern" means a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is bidding on Government contracts, and can further qualify under the criteria set forth in regulations of the Small Business Administration (CFR Title 13, Section 121.3-8). In addition to meeting these criteria, a manufacturer or a regular dealer submitting offers in its own name must agree to furnish in the performance of the contract end items manufactured or produced by small business concerns; provided, that this additional requirement does not apply in connection with construction or service contracts.

(5) **AGREEMENT.** The offeror agrees that if awarded a contract as a LSA concern under the failed portion of this procurement, it will perform, or cause to be performed, a substantial proportion of the contract in areas classified at the time of award or at the time of performance of the contract as a LSA.

(6) IDENTIFICATION OF AREAS OF PERFORMANCE.

Each offeror desiring to be considered for award as a LSA concern on the failed 8(a) portion of this procurement shall identify below the geographical areas in which it proposes to perform, or cause to be performed, a substantial proportion of the contract. Such offerors are instructed to insert the address(es) when costs incurred on account of manufacturing or production (by the offeror or first tier subcontractor) will amount to more than 50 percent of the contract price.

Name of Company:

Street Address:

City/County:

State:

(If more than one location is to be used, list each location and the costs to be incurred at each, stated as a percentage of the contract price.)

CAUTION: Failure to list the location of manufacture or production and the percentage of cost to be incurred at each location will preclude consideration of the offeror as a LSA concern.

If the Department of Labor classification of any such area changes after the offeror has submitted its offer, the offeror may change the areas in which it proposes to perform, provided that it so notifies the Contracting Officer before award of the failed 8(a) portion.

(7) **REQUIREMENTS CONTRACT.** In the event multiple awards to two or more suppliers are made for any one item, for the purpose of equitably distributing orders between Contractors for the Schedule and failed 8(a) portion, "the Government will endeavor to apportion the quantities to be ordered, as equally as possible."

NOTE: When responsive offers are received offering an eligible product listed in DFARS 225.403-70, priority for award shall exclude from paragraph 2 above, Group 2; and Group 4 shall be titled "Other Business Concerns."

(DFSC 52.215-9F21)

L74 TYPE OF CONTRACT (APR 1984)

The Government contemplates award of a **FIRM FIXED PRICE** contract resulting from this solicitation.

(FAR 52.216-1)

L115 F.O.B. ORIGIN AND/OR F.O.B. DESTINATION EVALUATION (APR 1984)

Offers are invited on the basis of both f.o.b. origin and f.o.b. destination, and the Government will award on the basis the Contracting Officer determines to be most advantageous to the Government. An offer on the basis of f.o.b. origin only or f.o.b. destination only is acceptable, but will be evaluated only on the basis submitted.

(FAR 52.247-45)

L203 HANDCARRIED OFFERS AND EXPRESS DELIVERY SERVICE (DFSC MAR 1996)

(a) Any handcarried offer must be received at the depository indicated on the Standard Form (SF) 33 or SF 1449 of this solicitation by the date and time specified for receipt of offers. Evidence to establish the time of receipt at the Government installation is the time/date stamp of that installation on the solicitation wrapper or other documentary evidence of receipt maintained by the installation.

(b) Offers delivered by an express delivery service will be considered "handcarried." Therefore, bidders/offers that respond to this solicitation using an express delivery service must ensure that the express delivery service "handcarries" the offer to the depository indicated on the SF 33 or SF 1449.

(c) The term **express delivery service** does not include Express Mail delivered by the United States Postal Service. Express Mail will be considered "mail" under the LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF PROPOSALS, and LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF BIDS provisions.

(DFSC 52.252-9F01)

L205 COMMERCIAL AND GOVERNMENT ENTITY (CAGE) CODE REPORTING (DEC 1991)

(a) The offeror is requested to enter its CAGE code on its offer in the block with its name and address. The CAGE code must be for that name and address. Enter CAGE before the number.

(b) If the offeror does not have a CAGE code, it may ask the Contracting Officer to request one from the Defense Logistics Services Center (DLSC). The Contracting Officer will--

(1) Ask the Contractor to complete section B of a DD Form 2051, Request for Assignment of a Commercial and Government Entity (CAGE) Code;

(2) Complete section A and forward the form to DLSC; and

(3) Notify the Contractor of its assigned CAGE code.

(c) Do not delay submission of the offer pending receipt of a CAGE code

(DFARS 252.204-7001)

EVALUATION FACTORS FOR AWARD**M11 EVALUATION - F.O.B. ORIGIN (APR 1984)**

Land methods of transportation by regulated common carrier are the normal means of transportation used by the Government for shipment within the United States (excluding Alaska and Hawaii). Accordingly, for the purpose of evaluating offers, only these methods will be considered in establishing the cost of transportation between offeror's shipping point and destination (tentative or firm, whichever is applicable) in the United States (excluding Alaska and Hawaii). This transportation cost will be added to the offer price in determining the overall cost of the supplies to the Government. When tentative destinations are indicated, they will be used only for evaluation purposes, the Government having the right to use any other means of transportation or any other destination at the time of shipment.

(FAR 52.247-47)

M13 EVALUATION OF OFFERS INVOLVING MULTIPLE MINES (DFSC FEB 1970)

(a) Unless the offeror expressly reserves the right to supply coal under the item from any or all of the mines listed thereunder, the Government at its option may designate the mine or mines of those offered from which the coal required under the item may be supplied. The mine or mines from which coal shall be supplied under the item will be designated in the award.

(b) If the offeror expressly reserves the right to supply coal under an item from any or all of the mines listed under such item, the Government, in the event of award thereon, will accept coal under that item from any or all of the mines listed.

(DFSC 52.208-9F02)

M14 EVALUATION OF OFFERS (COAL) (DFSC NOV 1994)

Offers will be evaluated on the basis of the following:

Awards will be based on the greatest number of "As Received B.T.U. per one cent delivered at destination."

(a) The number of "As Received B.T.U. per one cent delivered at destination" of the coal offered from any mine is computed by the following formula: The percentage arrived at by subtracting the percent of moisture from 100 percent shall be multiplied by the product of the dry B.T.U. per pound times 2,000 (for net tons) or 2,204 (for metric tons). The product of this multiplication shall be used as a numerator to be divided by the sum of the delivered cost per ton, per line item, expressed in cents.

(b) In applying the above formula, the following will be used:

(1) The offeror's guaranteed moisture; and

(2) The dry B.T.U. per pound guaranteed by the offeror.

(3) In addition, for Germany acquisitions, the applicable Military Sealift Command ocean vessel rate per metric ton.

(c) If the offer provides the Government with an option to designate from which of the listed mines for an item that coal may be supplied, the offer on that item will be evaluated on the basis of the number of "As Received B.T.U. per one cent delivered at destination" of coal from that listed mine which produces coal having the highest number of "As Received B.T.U. per one cent delivered at destination." If a quantity of coal less than the total tonnage required under the item is awarded the offeror for production from this mine, the offer on the item will be evaluated as to the balance of such required tonnage on the basis of the number of "As Received B.T.U. per one cent delivered at destination," of coal from that listed mine which produces coal having the next highest number of "As Received B.T.U. per one cent delivered at destination." This same procedure will apply in evaluating coal from the remaining mines offered under the item until the total quantity of the item is awarded.

(d) If the offer under any item reserves to the offeror the right to supply coal from any or all of the mines listed thereunder, the offer on that item will be evaluated on the basis of the number of "As Received B.T.U. per one cent delivered at destination" of coal from the listed mine for that item which produces coal having the lowest number of "As Received B.T.U. per one cent delivered at destination."

(e) The bottom size specified for double-screened coal is considered a minimum only. Accordingly, offers for any item requiring double-screened coal where the bottom size of coal offered is larger than the bottom size specified for such item will not be rejected, but will be evaluated on the same basis as all other offers received.

(f) The offeror shall indicate guarantee on all elements of the specifications.

(g) The Government will determine, based upon published and special reports issued by the United States Department of Energy, Coal Sampling and Inspection Office, or the U.S. Army General Material and Petroleum Activity Laboratory, if the coal offered from the "mine" or "mines" set forth in the offer meets all the requirements of the specifications shown on the Schedule. Those coal offers which do not meet the specifications and those coal offers for which there are no special or published reports will be rejected as nonresponsive. It shall be incumbent upon offerors to insure that coal offered has been sampled by the United States Department of Energy, Coal Sampling and Inspection Office, or the U.S. Army General Material and Petroleum Activity Laboratory prior to submitting an offer. A coal size required by the solicitation and offered for which no such reports are available will be evaluated on the nearest coal size, as determined by the Government, for which reports exist.

(DFSC 52.214-9F03)

M30 EVALUATION - FREEZE PROOFING AND/OR OIL TREATMENT (DFSC JAN 1984)

(a) When no additional charge is indicated for freeze proofing and/or oil treatment, no charge will be considered in evaluation or paid under contracts awarded.

(b) When a separate charge is indicated for freeze proofing and/or oil treatment, the bid/offer will be evaluated by adding a proportionate factor for treating the estimated tonnage (see below) that will require freeze proofing and/or oil treatment. Award will be made on the bid/offer yielding the maximum As Received British Thermal Units (ARBTU) per one cent delivered, arrived at in this manner.

(c) For each line item which indicates, on DFSC Form 6.37-S, that coal must be freeze-proofed and/or oil treated, bid/offer on DFSC Form 6.37-R or 6.37-T must state that freeze-proofed and/or oil treated coal will be provided. Formally advertised bids which do not indicate freeze-proofed and/or oil treated, if required, will be considered nonresponsive.

<u>ITEM.</u>	<u>LOCATION(S)</u>	<u>EST. TONS REQUIRING OIL TREATMENT</u>	<u>EST. TONS REQUIRING FREEZE PROOFING</u>
0001	U.S. PENITENTIARY MARION, IL	4,000 NET TONS	4,000 NET TONS

(DFSC 52.212-9F08)

M72.02-1 EVALUATION FACTORS FOR BEST OVERALL VALUE (COAL) (DFSC JUN 1996) (REV)

(a) **APPLICATION.** This provision applies only after all price evaluation factors have been considered.

(b) **BASIS OF AWARD.**

(1) The Government will make awards to the responsible offeror(s) whose offer conforms to the solicitation and that represents the best overall value. The Government will determine best overall value on the basis of an integrated assessment of the evaluation factors for award. While total evaluated As Received British Thermal Unit per one cent (ARBTU/1¢) will be the most important factor in the evaluation of offers, the Government may make award to other than the highest evaluated ARBTU/1¢ offeror when a lower evaluated ARBTU/1¢ offeror has a record of past performance that demonstrates a greater probability that it will satisfy the solicitation requirements than the higher evaluated ARBTU/1¢ offeror. However, the Government will not award to a lower evaluated ARBTU/1¢ offeror if it considers the lower evaluated ARBTU/1¢ disproportionate to the benefits associated with the offeror's past performance.

(2) In determining best overall value, a comparative assessment will be made between the offeror's evaluated ARBTU/1¢, record of past performance, and other factors. The offeror that represents the best overall value will be the offeror that represents the best tradeoff between evaluated ARBTU/1¢, past performance, and other factors.

(c) **ACCEPTABILITY OF OFFERS.** An offer will be considered acceptable if, and only if, an offeror agrees to the terms and conditions of the solicitation, or if the Government has accepted any exceptions submitted with the offer. The Government will confirm the acceptability of each offer on a pass/fail basis.

(e) **EVALUATION OF PAST PERFORMANCE.**

(d) **PRICE.** The Government will perform a price analysis to determine the reasonableness of proposed prices in accordance with FAR 15.805.

(1) The Government will evaluate the quality of the offeror's past performance. By past performance, the Government means the offeror's record of conforming to contract requirements and to standards of good workmanship; the offeror's adherence to contract schedules, including the administrative aspects of performance; the offeror's reputation for reasonable and cooperative behavior and commitment to customer satisfaction; and, generally, the offeror's business-like concern for the interest of the customer.

(2) The assessment of the offeror's past performance will be used as a means of evaluating the relative capability of the offeror and the other competitors. This assessment will be subjective, based on consideration of all relevant facts and circumstances. It will not be based on absolute standards of acceptable past performance. Thus, a record of marginal or unsatisfactory past performance may be considered an indication that the offeror may be lacking in areas such as quality, reliability, and customer satisfaction. However, a record of average or exceptional past performance will not result in a favorable assessment of an otherwise unacceptable proposal. In particular, recent contracts may be examined to ensure that corrective action measures have been put in place to prevent the recurrence of past performance problems. Prompt actions taken to correct performance problems may be considered a reflection of management concern for customer satisfaction; however, such action may not mitigate all negative performance trends.

(3) The Government reserves the right to consider any information available to it in evaluating an offeror's past performance. This includes information obtained from the offeror's references. However, the Government reserves the right not to contact all of the references listed by the offeror. The Government may consider other past performance information obtained from past and

M72.02-1 CONT'D

present customers, subcontractors, and any other sources that may have useful information. If the offeror is the incumbent Contractor for any line item on which it offers under this solicitation, the Government reserves the right to assess the offeror's past performance based solely on the offeror's performance under that contract. Further, if the offeror has held previous contracts with DFSC, the Government reserves the right to assess the offeror's past performance based solely on the offeror's performance under the DFSC contracts. The Government may, however, choose to consider other available information.

(4) Offerors lacking any relevant past performance history will receive a neutral past performance rating.

(5) The subfactors listed below, which are equal in importance, will be used to evaluate past performance:

(i) **Quality.** The extent to which the offeror demonstrated its ability to obtain product that meets contract specification requirements.

(ii) **Reliability.** The offeror's demonstrated ability to meet contract schedules and delivery dates.

(iii) **Customer Satisfaction.** The offeror's demonstrated commitment to maintaining an acceptable level of performance and customer satisfaction.

(f) **SOCIOECONOMIC EVALUATION.**

(1) The Government will evaluate the extent to which the offeror identifies and commits to using small, small disadvantaged, and women-owned small businesses in the performance of the contract. The socioeconomic information provided by the offeror under the PROPOSAL PREPARATION INSTRUCTIONS AND PAST PERFORMANCE SUBMISSION clause will be evaluated on a comparative basis among all offerors. An offeror that proposes a higher percentage, complexity level, and variety of participation by small, small disadvantaged, and women-owned small businesses, combined, generally will receive a higher rating on this factor. An offeror's efforts to develop additional opportunities for small, small disadvantaged, and women-owned small businesses will also be comparatively evaluated with the proposals of other offerors. Offerors' proposals for socioeconomic support will be made a part of any resulting contract for use in determining how well the Contractor has adhered to its socioeconomic plan.

(2) Past performance on prior contracts in subcontracting and assisting small, small disadvantaged, and women-owned small businesses will also be evaluated as part of this factor.

(g) **RELATIVE IMPORTANCE OF EVALUATION FACTORS.** Proposals will be evaluated and rated against the factors listed below in descending order of importance:

(1) Evaluated ARBTU/1¢;

(2) Past performance; and

(3) **Socioeconomic plan.** Past performance is slightly less important than ARBTU/1¢. Commitment to using small, small disadvantaged, and women-owned small businesses in the performance of the contract is significantly less important than ARBTU/1¢ and past performance. As proposals become more equal in the record of past performance, ARBTU/1¢ will become more important. Similarly, as proposals become more equal in ARBTU/1¢, the record of past performance will become more important.

LIST OF ATTACHMENTS

THE FOLLOWING ARE INCLUDED IN THIS SOLICITATION:

TITLE

DD Form 1707: Information to Offerors and Quoters
SF 1449, Solicitation/Contract/Order for Commercial Items
DFSC Form 6.37R, 6.37-T (Schedule)
DFSC Form 4.23, AUTHORIZATION AND MINE DESCRIPTION
Contractor Past Performance Data Sheet
Material Safety Data Sheet
DFSC-P Form 1, Small Business and Small Disadvantaged
Business Subcontracting Plan
Certification Package

LOCATION

Cover Sheet
Page 1
Page 3 thru 10
Attachement 1
Attachment 2
Attachment 3
Attachment 4

Attachment 5

ADDENDUM #2
(OTHER REGULATORY AND LOCAL CLAUSES)

DESCRIPTION/SPECIFICATIONS

C13 SIZE, SIZE CONSIST, AND PREPARATION (DFSC JAN 1984)

(a) In addition to conforming to all other specifications set forth in this contract, all coal delivered shall be substantially of the size or sizes specified, determined as follows:

(1) In all double screened coal (known as prepared sizes), the maximum and/or minimum top size specified shall pass through a round hole perforated screen (or its equivalent), the perforations of which are equal in diameter to the maximum and/or minimum top size specified. The maximum and/or minimum bottom size specified shall be retained on a round hole perforated screen (or its equivalent), the perforations of which are equal in diameter to the maximum and/or minimum bottom size specified.

(2) In all single screened coal (known as screenings, slack, or mechanically fired steam coal) the maximum and/or minimum top size specified shall pass through a round hole perforated screen (or its equivalent), the perforations of which are equal in diameter to the maximum and/or minimum top size specified. As single screened coal is purely a resultant product, no maximum and/or minimum bottom can be specified and no bottom screening required.

(3) Where "crushed run of mine" or "crushed prepared sizes" are accepted upon award for screenings and/or slack coal as described in (2) above, the maximum and/or minimum top sizes may be determined by adjusting the crusher to that position where the crushed product will not exceed the maximum top size or be less than the minimum top size required. Where such crushed coal is furnished, no screening is required.

(4) Run of mine coal shall be full of the mine with no sizes removed. Where the maximum size is limited by the contract terms, lumps exceeding that maximum size shall not be removed but shall be broken or crushed to come within the maximum size limitations.

(b) Where single screened and/or crushed coal of a definite size consist is required by the contract, all coal delivered thereunder shall meet or be better than the size consist specified in the Schedule for coal as determined in accordance with the following provisions:

(1) Size consist shall be determined by the percentage of a size consist sample of coal which is retained on and the percentage which passes through screens or a screen no less than 18" wide and 18" long, as follows:

(i) Coal with a specified maximum top size of 2-1/2" and a specified minimum top size of 2" shall be screened for size consist over two screens. The perforations of one screen shall be round holes 1-1/2" in diameter (or equivalent) spaced on 2" centers. The perforations of the second screen shall be round holes 1/4" in diameter (or equivalent) spaced on 3/8" centers;

(ii) Coal with a specified maximum top size of 2" and a specified minimum top size of 1-1/2" shall be screened for size consist over two screens. The perforations of one screen shall be round holes 1" in diameter (or equivalent) spaced on 1-3/8" center. The perforations of the second screen shall be round holes 1/4" in diameter (or equivalent) spaced on 3/8" centers;

(iii) Coal with a specified maximum top size of 1-1/2" and a specified minimum top size of 1" shall be screened for size consist over two screens. The perforations of one screen shall be round holes 1/2" in diameter (or equivalent) spaced on 1-1/16" centers. The perforations of the second screen shall be round holes 1/4" in diameter (or equivalent) spaced on 3/8" centers;

(2) When a definite size consist is required, the Schedule for coal will specify the minimum percentage for coal which will be retained or the maximum percentage of coal that will pass through the screen(s) described in (1) above.

(3) A size consist sample shall be no less than 1,000 pounds which shall be drawn in equal increments from not to exceed 5 carloads or truckloads of coal in any one shipment. If less than 5 carloads or truckloads are sampled for size consist, a minimum of 1,000 pounds shall be drawn in equal increments from not to exceed 5 carloads or truckloads. A minimum of 1,000 pounds shall be drawn in equal increments from the car or cars or truckloads or truck sampled for size consist.

(4) The size consist sample shall be drawn in equal increments from 9 points in the car or cars or truckloads or truck taken diagonally across the car or truck beginning in the front corner; diagonally across the car or truck from the side center; and diagonally across the car or truck from the side of the car or truck with the 9th increment taken from the rear corner of the side of the car or truck opposite that from which the first increment was drawn.

(5) If the size consist of the car or cars or truckloads or truck sampled and screened as above described, fails to meet the size consist required by the Schedule, the coal will be rejected and the Contractor required to remove the coal at his expense.

C13 CONT'D

(6) No coal will be rejected for failure to meet size consist requirements unless a size consist sample has been drawn and screened, as above described, unless it is obvious upon a visual inspection that the coal fails to meet size consist requirements and that fact is acknowledged by a Contractor's representative. The screening test at the receiving activity shall be conclusive as to whether the size consist requirement has been met.

(7) The screened sample shall be retained in a protected place for seven full days, not counting the day the sample is screened, and shall be available for inspection by the Contractor and/or the Contracting Officer.

Example: Sample Screening Date: 15 Nov
 Holding Period: 16 - 22 Nov
 Destroy Sample: 23 Nov

(8) Coal rejected for noncompliance with size consist requirements may be accepted at an adjusted price recommended by the receiving activity and agreed to by the Contractor and the Contracting Officer.

(c) Double screened coal in all sizes shall be so prepared as to be reasonably free from fines, oversize or undersize coal. Single screened coal (screenings, slack, or mechanically fired steam coal) shall be reasonably free from oversize coal.

C20 SULFUR CONTENT GUARANTEE (DFSC MAY 1987)

The sulfur content of the coal to be furnished under this solicitation must be that percentage specified in the Schedule under MINIMUM QUALITY, or that percentage prescribed by applicable state law or local ordinance in effect on the date specified for receipt of offers, whichever is lower. In the event an applicable State law or local ordinance prescribes a lower percentage of sulfur content than that specified in this solicitation, the lower percentage shall be inserted in the Guaranteed Analysis and the applicable State law or local ordinance shall be identified in the Schedule. (DFSC 52.246-9F15)

E1.03 CONTRACTOR INSPECTION RESPONSIBILITIES (COAL) (DFSC JUL 1992)

(a) The Contractor shall provide and maintain, and assure that subcontractors provide and maintain, an inspection system acceptable to the Government. The Contractor shall prepare, and assure that subcontractors prepare, a written description covering their procedures and operations directly relating to the supplies to be furnished under this contract: (1) receiving, (2) sampling, (3) testing, (4) calibration of testing and measuring equipment, (5) loading and shipping, and (6) records and reports. The description shall also include the designation of key operational positions. The inspection system, including operations related thereto and performed pursuant to this clause, shall be subject to surveillance by the Quality Representative.

(b) The Contractor shall either perform, or provide an independent laboratory acceptable to the Government (see the QUALITY PROVISIONS clause) to perform, all sampling and acceptance tests set forth in this contract in order to substantiate conformance of such supplies to the quality required by this contract; when such tests are performed at origin on supplies to be accepted at destination, the Contractor shall further provide, or cause to be provided, at the point and time of acceptance, such evidence of quality that will enable the Government to verify original test results. Such evidence of quality shall consist of an analytical test report, which shall also include railcar or truck numbers.

(c) At the time of each shipment under this contract, the Contractor shall prepare and furnish to the Government a Material Inspection and Receiving Report (DD Form 250 series) in the manner and to the extent required by DoD FAR Supplement Appendix F, Material Inspection and Receiving Report, or as stated elsewhere in the contract.

(d) The Contractor shall inspect, prior to loading, all shipping conveyances to determine that such conveyances are suitable for loading.

(e) The Contractor shall keep all quality and quantity records, including DD Form 250 series documents, complete and available to the Government during the performance of this contract and for 3 years after final payment under this contract.

E1.04 QUALITY PROVISIONS (COAL) (DFSC JUL 1992) RESPONSIBILITY FOR INSPECTION.

Unless otherwise specified in the contract, the Contractor is responsible for the performance of all inspection requirements as specified herein. Except as otherwise specified in the contract, the Contractor may use its own or any other facilities suitable for performance of the inspection requirements specified herein, unless disapproved by the Government. The Government reserves the right to perform any inspection deemed necessary to assure supplies and services conform to the contract specifications.

(a) **QUALITY CONFORMANCE INSPECTION.** Individual lots shall be examined as specified herein and subjected to tests for all requirements cited in the Schedule.

(b) **INSPECTION LOT.** A lot shall consist of a heterogeneous mixture of coal to be represented by gross sample.

(c) **SAMPLING.**

(1) **SAMPLING FOR VERIFICATION OF PRODUCT QUALITY** Each lot of coal shall be sampled for verification of product quality in accordance with ASTM D 2234, except as otherwise approved by the Contracting Officer's Quality Representative.

(2) **GROSS SAMPLE.** A gross sample is a sample representing one lot of coal and composed of a number of increments on which neither reduction nor division has been performed. One gross sample shall represent one lot of no greater quantity than 1000 tons.

(3) **INCREMENT.** An increment is a small portion of the lot collected by one operation of a sampling device and normally combined with other increments from the lot to make a gross sample.

(4) **INCREMENT COLLECTION CLASSIFICATION.**

(i) The type of increment to be collected from the bulk lot shall be Type I as defined in ASTM Method D 2234.

(ii) The condition of increment collection shall be either Condition A or Condition B as defined in ASTM Method D 2234.

(iii) The spacing of increments shall be Systematic 1 as defined in ASTM Method D 2234 and be distributed throughout the entire lot.

(iv) The number and weight of the increments shall be as specified in Table 2 of ASTM Method D 2234. For example, raw coal with a top size of 2" will require a minimum of 35 increments taken systematically by either "stop-belt" or "moving stream" "condition" from the lot of 1000 tons or less. Each increment shall weigh a minimum of 6 lbs.

(5) **MECHANICAL COAL SAMPLING.**

(i) In response to this solicitation, Contractors proposing to use mechanical sampling equipment to satisfy the collection method for condition B, full stream cut as defined in ASTM D 2234, must include with the offer a detailed description of the sampling procedures, including drawings and operating instructions.

(ii) Contractor's written procedures, will also describe whether this sample method is ASTM approved (or equivalent) and complies with the collection criteria in D 2234 for obtaining a gross sample of coal.

(iii) Mechanical coal sampling systems, procedures and operations related thereto are subject to surveillance by the Quality Representative (QR) and must be acceptable to the Government. The Government's acceptance will be based on an evaluation of the above data and the recommendation/checklist submitted by the QR in accordance with ASTM Method D 4702.

(d) **PREPARING COAL SAMPLES FOR ANALYSIS.** The gross sample shall be prepared for analysis in accordance with ASTM Method D 2013.

(e) **TEST METHODS.** The standard test methods used for coal to determine conformance to chemical and physical requirements of the contract shall be conducted in accordance with ASTM standards listed in Table I:

TABLE I

<u>TEST</u>	<u>TEST METHOD NO. ASTM</u>
Moisture, Total (as received)	D 3173 or D 3302 (D 2013)
Volatile Matter, Dry	D 3175
Ash, Dry	D 3174
Sulfur, Dry	(1)D 4239 (Method B or C)
BTU, Dry	D 2015 or D 3286

E1.04 CONT'D

Ash Softening Temperature ^{OF}	(2)D 1857
Free Swelling Index	D 720
Hardgrove Grindability	D 409
Sieve Analysis/Coal Size	(3)D 4749
Sodium (Na ₂ O)	(4)D 3682

FOOTNOTES

- (1) Authorized Alternative Method A or B, ASTM D 3177.
- (2) Report ash fusion temperature as tested in a reducing atmosphere.
When H=1/2W is indicated in the Schedule of Supplies, the analysis will report the Hemispherical Temperature (HT).
- (3) Disregard Table 3 (D 4749) for gross sample quantity and utilize the Raw (Uncleaned Coal) section of Table 2, ASTM D 2234. Collect the gross sample for sieve analysis by doubling the number of increments listed for Raw (Uncleaned Coal), according to top size, for General Purpose Sampling Procedure (Table 2). The actual weight of the gross sample tested will be shown on the analytical test report. This gross sample is intended for sieve analysis determination only.
- (4) When specified in the contract.

(f) LABORATORY ACCEPTANCE.

(1) For evaluation by the Government, the Contractor's laboratory will have available and submit to the QR, at a minimum, the information required by the Sample Worksheet (FIG.X1.1), ASTM D 4182, unless evidence of laboratory accreditation from an independent laboratory association can be supplied by the Contractor.

(2) When applicable, the following requirements will be added as a continuation to the sample worksheet evaluation:

VII GRINDABILITY (Hardgrove - Machine).

- A Date of last calibration. Was calibration chart prepared?
- B Is revolution counter operating and does it stop automatically after setting at 60 revolutions?
- C Are sieving and weighing operations carried out without delay?

VIII FREE-SWELLING INDEX.

- A Are proper temperature and rate of temperature rise for either electric or gas heating maintained?
- B Do test buttons compare well to the standard profiles?

IX SIEVE ANALYSIS/COAL SIZE.

- A Are round hole sieves with a staggered pattern used when sizing for 1/4" or larger coal?
- B Do sieve plates show any visible damage?
- C Are sieve plates painted, plated, or coated?
- D Is a continuous mechanical sieve shaker used?
- E Before and after sieving, is the test sample/sieved coal weighed to within .5% or better?

(DFSC 52.246-9F19)

E3 CERTIFICATE OF CONFORMANCE (APR 1984)

(a) When authorized in writing by the cognizant Contract Administration Office (CAO), the Contractor shall ship with a Certificate of Conformance any supplies for which the contract would otherwise require inspection at source. In no case shall the Government's right to inspect supplies under the inspection provisions of this contract be prejudiced. Shipments of such supplies will not be made under this contract until use of the Certificate of Conformance has been authorized in writing by the CAO, or inspection and acceptance have occurred.

(b) The Contractor's signed certificate shall be attached to or included on the top copy of the inspection or receiving report distributed to the payment office or attached to the CAO copy when contract administration (Block 10 of the DD Form 250) is performed by the Defense Contract Administration Services. In addition, a copy of the signed certificate shall also be attached to or entered on copies of the inspection or receiving report accompanying the shipment.

(c) The Government has the right to reject defective supplies or services within a reasonable time after delivery by written notification to the Contractor. The Contractor shall in such event promptly replace, correct, or repair the rejected supplies or services at the Contractor's expense.

(d) The certificate shall read as follows:

"I certify that on _____ [insert date], the _____ [insert Contractor's name] furnished the supplies or services called for by Contract No. _____ via _____ [Carrier] on _____ [identify the bill of lading or shipping document] in accordance with all applicable requirements. I further certify that the supplies or services are of the quality specified and conform in all respects with the contract requirements, including specifications, drawings, preservation, packaging, packing, marking requirements, and physical item identification (part number) and are in the quantity shown on this or on the attached acceptance document."

Date of Execution: _____

Signature: _____

Title: _____

(FAR 52.246-15)

E5 INSPECTION OF SUPPLIES - FIXED-PRICE (JUL 1985)

(a) **DEFINITION. Supplies**, as used in this clause, includes but is not limited to raw materials, components, intermediate assemblies, end products, and lots of supplies.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering supplies under this contract and shall tender to the Government, for acceptance, only supplies that have been inspected in accordance with the inspection system and have been found by the Contractor to be in conformity with contract requirements. As part of the system, the Contractor shall prepare records evidencing all inspections made under the system and the outcome. These records shall be kept complete and made available to the Government during contract performance and for as long afterwards as the contract requires. The Government may perform reviews and evaluations as reasonably necessary to ascertain compliance with this paragraph. These reviews and evaluations shall be conducted in a manner that will not unduly delay the contract work. The right of review, whether exercised or not, does not relieve the Contractor of the obligations under the contract.

(c) The Government has the right to inspect and test all supplies called for by the contract, to the extent practicable, at all places and times, including the period of manufacture, and in any event before acceptance. The Government shall perform inspections and tests in a manner that will not unduly delay the work. The Government assumes no contractual obligation to perform any inspection and test for the benefit of the Contractor unless specifically set forth elsewhere in this contract.

(d) If the Government performs inspection or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, without additional charge, all reasonable facilities and assistance for the safe

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and convenient performance of these duties. Except as otherwise provided in the contract, the Government shall bear the expense of Government inspections or tests made at other than the Contractor's or subcontractor's premises; PROVIDED, that in case of rejection, the Government shall not be liable for any reduction in the value of inspection or test samples.

(e) (1) When supplies are not ready at the time specified by the Contractor for inspection or test, the Contracting Officer may charge to the Contractor the additional cost of inspection or test.

(2) The Contracting Officer may also charge the Contractor for any additional cost of inspection or test when prior rejection makes reinspection or retest necessary.

(f) The Government has the right either to reject or to require correction of nonconforming supplies. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with contract requirements. The Government may reject nonconforming supplies with or without disposition instructions.

(g) The Contractor shall remove supplies rejected or required to be corrected. However, the Contracting Officer may require or permit correction in place, promptly after notice, by and at the expense of the Contractor. The Contractor shall not tender for acceptance corrected or rejected supplies without disclosing the former rejection or requirement for correction, and, when required, shall disclose the corrective action taken.

(h) If the Contractor fails to promptly remove, replace, or correct rejected supplies that are required to be removed or to be replaced or corrected, the Government may either (1) by contract or otherwise, remove, replace, or correct the supplies and charge the cost to the Contractor or (2) terminate the contract for default. Unless the Contractor corrects or replaces the supplies within the delivery schedule, the Contracting Officer may require their delivery and make an equitable price reduction. Failure to agree to a price reduction shall be a dispute.

(i) (1) If this contract provides for the performance of Government quality assurance at source, and if requested by the Government, the Contractor shall furnish advance notification of the time (i) when Contractor inspection or tests will be performed in accordance with the terms and conditions of the contract and (ii) when the supplies will be ready for Government inspection.

(2) The Government's request shall specify the period and method of the advance notification and the Government representative to whom it shall be furnished. Requests shall not require more than 2 workdays of advance notification if the Government representative is in residence in the Contractor's plant, nor more than 7 workdays in other instances.

(j) The Government shall accept or reject supplies as promptly as practicable after delivery, unless otherwise provided in the contract. Government failure to inspect and accept or reject the supplies shall not relieve the Contractor from responsibility, nor impose liability on the Government, for nonconforming supplies.

(k) Inspections and tests by the Government do not relieve the Contractor of responsibility for defects or other failures to meet contract requirements discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the contract.

(l) If acceptance is not conclusive for any of the reasons in paragraph (k) hereof, the Government, in addition to any other rights and remedies provided by law, or under other provisions of this contract, shall have the right to require the Contractor (1) at no increase in contract price, to correct or replace the defective or nonconforming supplies at the original point of delivery or at the Contractor's plant at the Contracting Officer's election, and in accordance with a reasonable delivery schedule as may be agreed upon between the Contractor and the Contracting Officer; PROVIDED, that the Contracting Officer may require a reduction in contract price if the Contractor fails to meet such delivery schedule, or (2) within a reasonable time after receipt by the Contractor of notice of defects

or nonconformance, to repay such portion of the contract as is equitable under the circumstances if the Contracting Officer elects not to require correction or replacement. When supplies are returned to the Contractor, the Contractor shall bear the transportation cost from the original point of delivery to the Contractor's plant and return to the original point when that point is not the Contractor's plant. If the Contractor fails to perform or act as required in (1) or (2) above and does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure, the Government shall have the right by contract or otherwise to replace or correct such supplies and charge to the Contractor the cost occasioned the Government thereby.

(FAR 52.246-2)

E24 DESTINATION INSPECTION AND ACCEPTANCE (COAL) (DFSC AUG 1982)

(a) All coal delivered hereunder shall be inspected at destination to determine (1) that it is reasonably free from slate, bone, sulfur balls, dirt, and other characteristic impurities, and from extraneous foreign matter, including excessive water or moisture in truck delivering coal, (2) that it is not oxidized or weathered, (3) that it is properly prepared and reasonably free from fines, undersize and oversize coal, and (4) that it is of analytical quality equal to or better than the quality required as set forth in the Minimum Specification Quality Required section of the Schedule of Supplies as evidenced by the Contractor's analytical test report identified with said shipment.

(b) If, upon inspection, the Government determines (1) that any coal delivered hereunder is not reasonably free from slate, bone, sulfur balls, dirt, and other characteristic impurities, or extraneous foreign matter, or in the case of truck delivered coal, from excessive moisture or water, (2) that it is oxidized and/or weathered, or (3) that it is not of analytical quality equal to or better than the quality required as set forth in the Minimum Specification Quality Required section of the Schedule of Supplies as evidenced by the Contractor's analytical test report identified with said shipment, the Contracting Officer may reject the coal by prompt telephonic or telegraphic notice, confirmed in writing, to the Contractor. All notices of rejection shall state the car numbers, or in the case of truck or

barge delivery, the proper identifying data, containing the rejected coal and the specific reason or reasons for the rejection. Rejections made by other than the Contracting Officer, or those specifically designated in the contract to make rejections, shall be null and void.

(c) If such notice specifies that the coal rejected is (1) not reasonably free from slate, bone, dirt, and other characteristic impurities or (2) oxidized or weathered, the Contractor may, by telegraphic notice not later than 48 hours after his receipt of the rejection notice, request the Government to sample and analyze the rejected coal. If the coal has been rejected because it is not reasonably free from slate, bone, dirt, and other characteristic impurities, the sample will be analyzed for the dry ash content. If the coal has been rejected because it is oxidized or weathered, the sample will be analyzed for its free swelling index. The collection and preparation of such samples shall be in accordance with the "Quality Assurance Procedures for Receipt of Coal Procured through DFSC (DFSCM 4185.1)," except that the rejected coal shall not be unloaded and the samples shall be taken from the tops of the cars, trucks, or barges. The Contractor may be present at the taking of such sample, but the absence of the Contractor shall not be grounds for setting aside the results of the analysis of the samples. The United States Department of Energy (DOE) or U.S. Army General Materiel and Petroleum Activity (USAGMPA) shall make the analysis of each such sample, and such analysis shall be final and conclusive on the parties hereto. In the event that (1) the Contractor has not guaranteed the analysis, or has not represented that the coal will meet the free swelling index requirements of the Schedule, and the rejected coal is found to be equal to or better than the contract requirements, with respect to dry ash and/or the free swelling index, or (2) the Contractor has guaranteed the analysis and has represented the coal would meet the free swelling index required in the Schedule, and the rejected coal is found by such analysis to be equal to or better than the requirement of the guaranteed dry ash analysis, or equal to or better than the represented free swelling index, the Contracting Officer shall withdraw such notice of rejection and accept the previously rejected coal. If previously rejected coal is accepted, pursuant to this paragraph (c), the Government shall pay any demurrage which has accrued with respect thereto, but the Government shall have no further liability to the Contractor whatsoever on account of such previous rejection. Previously rejected coal not acceptable under this paragraph (c), however, shall be deemed to be coal rejected under (b) above, and such rejection shall be effective as of the date of the original notification thereof; and in the event of such rejection, the Contractor shall promptly pay to the Government the sum of \$75 for each such analysis applicable thereto to cover the cost of making each such analysis.

(d) If the notice of rejection under (b) above specifies that the coal is rejected because of excess extraneous foreign matter, or because of large sulfur balls, large slabs of rock or slate, or other material that cannot be reasonably crushed into a sample, or in the case of truck delivered coal, for excessive water or moisture, the Contractor shall promptly remove the coal so rejected from the premises at its own expense. The Contractor has the right to inspect all coal visually inspected and rejected because of excess foreign matter or water as above described.

(e) In the event the coal is rejected pursuant to (b) above, the Contractor shall reimburse the Government for freight, if any, paid by the Government for the transportation of such rejected coal from the mine or mines to destination; and the Government, at its option, may exercise one or more of the following rights:

- (1) Require the Contractor at the Contractor's expense to remove the rejected coal.
- (2) Require the Contractor at the Contractor's expense to replace the rejected coal with an equal quantity of coal which meets the requirements of this contract.
- (3) Accept the previously rejected substandard coal in which event the contract price shall be reduced in an amount to be agreed upon by the Contractor and the Contracting Officer. Reductions in price for acceptance of previously rejected substandard coal shall be recommended by and acceptable to the using service initiating the rejection. Price reductions purporting to

be made or agreed to on behalf of the Government by anyone other than the Contracting Officer shall be null and void. When, because of low or

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no coal supply at an activity, it is necessary to accept previously rejected substandard coal, failure to agree to the amount of the reduction shall be deemed concerning a question of fact within the meaning of the DISPUTES clause.

(4) Notwithstanding any price reduction pursuant to (3) above, to compensate the Government for acceptance of coal not of the kind or size specified, or not reasonably free from slate, bone, sulfur, dirt, or other impurities, or coal that is oxidized or weathered Government may sample and analyze the coal pursuant to the SAMPLING AND EVALUATION clause, and, if the DOE or USAGMPA analysis established that the coal is not of the quality required by the analysis specified in the contract, the contract price reduced pursuant to (3) above shall be further reduced in the event the analysis is not guaranteed, in an amount to be determined pursuant to subparagraph (b)(3), of the SAMPLING AND EVALUATION clause.

(5) Decline to accept additional coal from the mine or mines from which the unsatisfactory coal was shipped and authorize the Contractor in writing to supply coal from other mines producing coal of the quality required under the contract without any increase in the contract price or in the transportation charges to the Government.

(6) As provided in the DEFAULT clause, terminate the Contractor's right to proceed with performance of the contract and purchase coal elsewhere, in which event any excess costs occasioned thereby shall be charged to the account of the Contractor.

(f) The Contractor shall bear any demurrage which may accrue on and after the date of notification of rejection pursuant to paragraph (b) above; provided, however, that the Government shall pay demurrage accruing subsequent to acceptance, pursuant to subparagraph (e)(3) above, of previously rejected coal.

(g) If upon visual inspection double-screened coal obviously exceeds the top size or obviously fails to meet the minimum bottom size, or if upon visual inspection single-screened coal obviously exceeds the top size specified, the Contracting Officer may reject the coal by prompt telegraphic or telephonic notice confirmed in writing to the Contractor. All notices of rejection shall state the car numbers containing the oversize and/or the undersize coal, the approximate size of the coal declared to be oversize, and/or undersize, and the approximate percentage of the oversize and/or undersize coal. Coal so rejected may be later accepted at an adjustment in price in accordance with paragraphs (e)(3), (e)(5), and (f) of this clause. (DFSC 52.246-9F05)

E25 SAMPLING AND EVALUATION (COAL) (DFSC MAY 1989)

(a) All coal may be regularly and continuously sampled, or only part or parts thereof may be sampled, as the Government may elect; and in the latter event, the analysis of a sample or samples shall be used as representing only the actual tonnage sampled. The collecting and preparing of samples shall be in accordance with "Quality Assurance Procedures for Receipt of Coal Procured through DFSC (DFSCM 4185.1)" or any revision thereof. The Contractor may be present at the taking of samples, but the

Government shall be under no obligation to notify the Contractor to be present. The U.S. Army General Materiel and Petroleum Activity (USAGMPA) shall make the analysis of each sample, and such USAGMPA analysis shall be final and conclusive on the parties hereto with respect to the actual tonnage sampled.

(b) If the Contractor has not met its guaranteed analysis on two or more deliveries, or deliveries aggregating 10 percent or more of the item quantity are found by sample analysis to be in any way inferior to contract requirements, the Government may, at its option, exercise one or more of the following rights:

(1) Decline to accept additional coal from the mine or mines from which the coal was shipped and authorize the Contractor in writing to supply coal from other mines producing coal of the quality required under the contract without any increase in the contract price or transportation charges to the Government;

(2) As provided in the DEFAULT clause, terminate the Contractor's right to proceed with performance of the contract and purchase coal elsewhere, in which event the Contractor shall be liable to the Government for any excess cost occasioned thereby; or

(3) Require the Contractor, with respect to all deliveries of such substandard coal, to credit or repay to the Government such portion of the contract price as the Contracting Officer determines to be equitable in the circumstances; subject, however, to the Contractor's right to appeal from such determination pursuant to the Disputes clause.

(c) If the Contractor has guaranteed the analysis and the USAGMPA analysis determines that any coal delivered under the contract does not meet the requirements of the guaranteed analysis, the Government may exercise its rights under subparagraph (b)(1) or (b)(2) of this clause, regardless of the amount of coal determined to be substandard. Whether or not such action is taken, if the "computed total value" of the coal delivered over the life of 41 the contract, as determined by evaluating individual USAGMPA

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analysis reports as provided below, is less than the "computed total value" of the coal as determined by evaluating the guaranteed analysis, the Contractor shall promptly pay to the Government, by way of liquidated damages, an amount to be determined as follows:

(1) The Contractor's guaranteed analysis shown in the contract, and the individual USAGMPA analysis reports covering shipments made on the contract shall be evaluated to determine the "As Received B.T.U. per one cent at destination" in accordance with the following formula: The percentage arrived at by subtracting the percent of moisture from 100% shall be multiplied by the product of the dry B.T.U. per pound times 2,000, the product of this multiplication shall be used as a numerator to be divided by the sum of the delivered cost per ton to the Government expressed in cents. The delivered cost shall be the cost in effect on the date the contract was awarded and shall be used throughout the life of the contract. To determine the "computed total value" of the coal delivered over the life of the contract, each applicable USAGMPA analysis report will be evaluated in accordance with the above formula using the moisture, the dry B.T.U. per pound, in the USAGMPA analysis of the samples of such coal. To determine the "computed total value" of the coal guaranteed by the Contractor's analysis, the moisture, dry B.T.U. per pound guaranteed by the Contractor, will be used in applying the above formula.

(2) The cost per net ton delivered at destination (price f.o.b. mine, plus transportation charges or price delivered to destination with all transportation charges paid by the Contractor) shall be multiplied by the ratio of the "As Received B.T.U. per one cent at destination" of the coal actually delivered (determined by evaluation of USAGMPA analysis reports) to the "As Received B.T.U. per one cent at destination" of coal required by the guaranteed analysis (determined by evaluation of Contractor's guarantee).

(3) If this product is less than the cost per ton delivered at destination, it shall be subtracted from the cost per ton delivered at destination.

(4) If this product is more than the cost per ton delivered at destination the cost per ton delivered at destination shall be subtracted from the product.

(5) If the product is less, as in (3) above, the difference shall be multiplied by the number of tons represented by the analysis report and this product carried as a debit against the contract until the contract has been completed and a final adjustment made, except as provided in subparagraphs (d)(1) and (d)(2) of this clause.

(6) If the product is more, as in (4) above, the difference shall be multiplied by the number of tons represented by the analysis report and this product carried as a credit to the contract until the contract has been completed and final adjustment made, except as provided in subparagraph (d)(1) of this clause.

(7) After deliveries under the contract have been completed, and except as provided in subparagraphs (d)(1) and (d)(2) of this clause, the final adjustment shall be made as follows: The total credits shall be subtracted from the total debits, and the Contractor shall promptly remit the difference to the Government as a price reduction by way of liquidated damages. However, if the total credits exceed the total debits, the contract price will not be increased on account of such credits.

Example: (Contract Guarantee)

Evaluation of analysis guaranteed by Contractor	
Freight per ton to destination	<u>13.50</u>
Delivered cost	\$ 51.50
Moisture guaranteed by Contractor	5%
Dry B.T.U. per pound guaranteed by Contractor	14,100
"As Received B.T.U. per one cent at destination" of coal required by the guaranteed analysis	
<u>$=(100\%-5\%) \times 14,100 \times 2000$</u>	
5150	
<u>26,790,000</u>	
= 5150	
=5202	

a. (Where contract is debited)

Evaluation of USAGMPA analysis of coal actually delivered.

Moisture reported in USAGMPA analysis	6.0%
Dry B.T.U. per pound reported in	
USAGMPA analysis	13,900
"As Received B.T.U. per one cent at destination" of coal actually delivered	

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$$\begin{aligned}
 &= \frac{(100\% - 6.0\%) \times 13,900 \text{ (ROUNDED*)} \times 2000}{5150} \\
 &= \frac{26,132,000}{5150} \\
 &= 5074 \text{ (ROUNDED*)}
 \end{aligned}$$

Ratio of "As Received B.T.U. per one cent at destination" of coal actually delivered to "As Received B.T.U. per one cent at destination" of coal required by evaluation of Contractor's guarantee analysis (calculated to the fourth decimal place only)

$$\begin{aligned}
 &= \frac{5074}{5202} \\
 &= 0.9754 \text{ (Ratio) (See para. (d)(ii))} \\
 &\text{Cost per net ton delivered at destination multiplied by the ratio stated above} \\
 &= \$51.50 \times 0.9754 \\
 &= \$50.23 \text{ per net ton} \\
 &\text{Price (debit) per net ton} \\
 &= \$51.50 - \$50.23 \\
 &= \$1.27 \text{ per net ton} \\
 &\text{Debits or credits to contract pending final adjustment upon completion} \\
 &= \text{Number of tons represented by analysis report} \quad 900 \\
 &\text{Adjusted amount per net ton} \quad \$ 1.27 \\
 &= 900 \times \$1.27 \\
 &= \$1,143.00 \\
 &= \text{Amount debited to contract}
 \end{aligned}$$

b. (Where contract is credited)

Evaluation of USAGMPA analysis of coal actually delivered
 Moisture reported in USAGMPA analysis 2.0%
 Dry B.T.U. per pound reported in USAGMPA analysis 14,590
 "As Received B.T.U. per one cent at destination" of coal actually delivered

$$\begin{aligned}
 &= \frac{(100\% - 2.0\%) \times 14,590 \text{ (ROUNDED*)} \times 2000}{5150} \\
 &= \frac{28,596,000}{5150} \\
 &= 5553 \text{ (ROUNDED*)}
 \end{aligned}$$

Ratio of "As Received B.T.U. per one cent at destination" of coal actually delivered to "As Received B.T.U. per one cent at destination" of coal required by evaluation of Contractor's guaranteed analysis (calculated to the fourth decimal place only).

$$\begin{aligned}
 &= \frac{5553}{5202} \\
 &= 1.0675 \text{ (Ratio)} \\
 &\text{Cost per net ton delivered at destination multiplied by the ratio stated above} \\
 &= \$51.50 \times 1.0675 \\
 &= \$54.98 \text{ per net ton} \\
 &\text{Price (credit) per net ton} \\
 &= \$54.98 - \$51.50
 \end{aligned}$$

E25 CONT'D

=\$3.48 per net ton
 Debits or credits to contract pending final adjustment upon completion
 =Number of tons represented by analysis report 453.95
 Adjusted amount per net ton \$ 3.48
 =453.95X\$3.48
 =\$1,579.75
 =Amount credited to contract

*.49 and below, figure stays the same

.50 and above, Round to the next higher figure

(d) (1) In the event that the evaluation of any individual USAGMPA report reflects that the ratio (calculated to the fourth decimal place) of "As Received B.T.U. per one cent at destination" of coal actually delivered to the "As Received B.T.U. per one cent at destination" required by the Contractor's guarantee is within the range 0.9850 to 1.0150 inclusive, debits or credits covering the individual reports will not be considered in the final adjustment upon completion of the contract, and the coal covered by such analysis reports shall be paid for at the contract price.

(2) In the event that the evaluation of any individual USAGMPA report reflects that the ratio (calculated to the fourth decimal place) of "As Received B.T.U. per one cent at destination" required by the Contractor's guarantee is 0.9500 or less, debits covering the individual reports will not be considered in the final adjustment upon completion of the contract, and the price per net ton of coal covered by such analysis report shall be immediately reduced by way of liquidated damages in an amount determined in accordance with the formula cited in paragraphs (c), (c)(1), (c)(2), and (c)(3) of this clause.

E26.01 SOURCE INSPECTION OF BULK DELIVERIES (COAL) (DFSC FEB 1979)

(a) The activity assigned coal procurement inspection responsibility for the geographical area wherein the point of bulk shipment (loading) is located is responsible for assuring compliance with the CONTRACTOR INSPECTION RESPONSIBILITIES clause.

(b) The following information will be dispatched by the Contractor so as to be available to the Government inspection activity for the shipping point as soon as possible but no less than 48 hours prior to the date of shipment:

- (1) Contract number and item number;
- (2) Date shipment is to be made;
- (3) Name and location of preparation plant or tipple from which shipment is to be made;
- (4) Identity of the consignee; and
- (5) Quantity to be shipped.

(c) The office responsible for inspection on behalf of the Government, shall be as follows:

<u>ITEM(S)</u>	<u>SOURCE OF PRODUCT AND/OR SHIPPING POINT</u>	<u>INSPECTION OFFICE</u>
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NOTE: Government will designate the applicable Inspection Office on resultant award documents.

E33.03 CONSIDERATION FOR EXCESS SULFUR AND ASH (COAL) (DFSC JUL 1984)

In addition to those rights provided under the SAMPLING AND EVALUATION clause, the Government will take the following actions if coal delivered under this contract has not met the Minimum Specification Quality Required for sulfur and ash, based on Department of Energy or U.S. Army General Materiel and Petroleum Activity Analysis Reports:

(a) Assess damages against the Contractor based upon the unit price of the coal as follows:

For each 0.10 percent (one-tenth of one percent) that the sulfur content exceeds the Minimum Specification Quality Required, (DFSC Form 6.37-S), the unit price of the coal, for the quantity represented by the analysis report, shall be decreased \$0.50 (fifty cents) per ton. The amount of these damages will be deducted from any payments due the Contractor. If payments are no longer due the Contractor, the Contractor shall promptly pay to the Government the amount of damages so determined.

(b) Assess damages against the Contractor based upon the unit price of the coal as follows:

For each 1.0 percent (one percent) that the ash content exceeds the Minimum Specification Quality Required (DFSC Form 6.37-S), the unit price of the coal, for the quantity represented by the analysis report, shall be decreased \$0.25 (twenty-five cents) per ton. The amount of these damages will be deducted from any payments due the Contractor. If payments are no longer due the Contractor, the Contractor shall promptly pay to the Government the amount of damages so determined. The ash penalty shall be assessed only when the delivered ash content of the coal exceeds the minimum specification quality required for ash by a full percent. Thereafter, penalties will be assessed for each fraction of a percent.

EXAMPLES

<u>ASH SPECIFICATION</u>	<u>DELIVERED ASH</u>	<u>PENALTY</u>
6.0	6.5	NONE
6.0	7.0	\$.25
6.0	7.5	\$.38

(c) Require the Contractor to pay to the Government any penalties or fines imposed upon any using activity by any Federal, State, or local authority, arising out of the delivery of coal containing sulfur in excess of the Minimum Specification Quality Required, or arising out of the delivery of coal with an ash content in excess of the Minimum Specification Quality Required. The amount of these penalties or fines will be deducted from any payments due the Contractor. If payments are no longer due the Contractor, the Contractor shall promptly pay to the Government the amount of such penalties or fines.

(DFSC 52.246-9F17)

E33.06 MINES (DFSC MAY 1992)

(a) Coal shall not be furnished from mines or tipples other than those stated on DFSC Form 6.37A (Award Continuation Sheet) for each installation or any modification thereto. Coal shipped from any other source may be rejected by the Government and the contract may be terminated pursuant to the DEFAULT clause of the contract.

(b) Notwithstanding the above, the Government reserves the right to accept or deny the Contractor's written request to furnish coal from mines or tipples in addition to those shown in the contract award Schedule. When additional mines or tipples are added to the Schedule by the Government at the written request of the Contractor, the Government reserves the right to require consideration in the form of a price reduction.

E35.02 REQUESTS FOR WAIVERS AND DEVIATIONS (DFSC MAY 1996)

(a) The following procedures apply to requests for specification waivers.

(1) Requests for waivers and deviations shall be submitted by the Contractor to the Contracting Officer with a copy to the Quality Representative (QR). Each request shall provide the following information: Contractor name; contract number; contract line item and product, if applicable; clause number, paragraph and subparagraph, as appropriate; the nature of the request; the reason for the request; the corrective action being taken by the Contractor to correct and prevent recurrence of the condition(s) causing the nonconformance; and equitable price adjustment offered over the administrative fee. In extraordinary situations, the Contractor may initially submit the request for a deviation or waiver through the cognizant QR to the Contracting Officer or the Contracting Officer's

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Representative (COR) in the Business Integration Center Commodity Business Unit, Product Services/Technical Operations Division, Defense Fuel Supply Center (DFSC). Extraordinary situation requests shall be submitted formally to the Contracting Officer prior to close of business of the next DFSC normal workday. As used in this clause, the term "extraordinary situation" means the matter cannot

await resolution until the DFSC normal workday (0800 to 1630 hours), Monday through Friday - Federal holidays excluded. In addition, if either the Contracting Officer or the COR cannot be reached, the Duty Officer shall be contacted and provided the necessary information to forward to the proper individuals as soon as possible. The Duty Officer's telephone number is (800) 286-7633, (703) 767-8420, or (DSN) 427-8420.

(2) If the waiver is granted, the contract will be modified to provide an equitable price reduction or other adequate consideration commensurate with the waiver being granted. If the situation dictates, a waiver may be granted without prior agreement on price adjustment or other consideration subject to agreement by the Contractor, or its representative, to subsequent negotiation. Such agreement shall be documented on the receiving document or other appropriate correspondence. After negotiations, failure to agree on adequate consideration shall be a dispute concerning a question of fact within the meaning of paragraph (d), Disputes, of the CONTRACT TERMS AND CONDITIONS -- COMMERCIAL ITEMS clause of this contract.

(3) If the waiver is granted and the nonconforming supplies are accepted, ~~the~~ in no event will consideration be less than \$250 to cover administrative costs, plus any additional cost of Government inspection or tests if reinspection or retest is necessary.

(4) If the waiver is granted modifying this contract but the supplies accepted are nevertheless determined to be in conformity with contract specifications, the Contractor shall still be obligated to pay the consideration originally agreed upon in support of the waiver. If, however, this consideration exceeds \$500, a second contract modification shall be issued reducing the Contractor's obligation to \$500 (the administrative cost of issuing the two required modifications).

(b) When notification of nonconforming supplies is received after the supplies have been accepted, and the Government determines not to exercise its right to reject or to require correction under the INSPECTION OF SUPPLIES clause, then in no event will consideration be less than \$250 to cover administrative costs. This \$250 fee is in addition to--

(1) Consideration commensurate with the extent of nonconforming supplies; and

(2) Cost of Government inspection or tests if reinspection or retest is necessary.

The administrative fee will apply to each claim letter issued for off-specification product delivered to an activity.

THE FOLLOWING CLAUSE, WHEN USED IN POSTS, CAMPS, AND STATIONS CONUS AND ALASKA SOLICITATIONS, APPLIES ONLY TO PRODUCT DELIVERED BY BARGE.

E40 MATERIAL INSPECTION AND RECEIVING REPORT (DEC 1991)

At the time of each delivery of supplies or services under this contract, the Contractor shall prepare and furnish to the Government a Material Inspection and Receiving Report in the manner and to the extent required by Appendix F, Material Inspection and Receiving Report, of the Defense FAR Supplement.

(DFARS 252.246-7000)

DELIVERIES OR PERFORMANCE**F3 TRANSPORT TRUCK AND/OR TRUCK AND TRAILER FREE TIME AND DETENTION RATES (PC&S/COAL) (DFSC JUN 1990)**

(a) Upon arrival of Contractor's transport truck or truck and trailer, the receiving activity shall promptly designate the delivery point into which the load is to be discharged. Contractor shall be paid for detention beyond free time for delays caused by the Government. A minimum of one hour free time is required.

(1) Free time for unloading a transport truck or truck and trailer in excess of one hour: _____.

(2) Rate for detention beyond free time: _____.

The above will not be considered in the evaluation of offers for award.

F3 CONT'D

(b) Notwithstanding the above, the Government is entitled to at least as much free time as is allowed by the common carrier or that the Contractor normally allows its regular commercial customers, whichever is greater. In addition, the Government will not pay more in detention rates than the actual rate charged by the common carrier or the rate the Contractor normally charges its regular commercial customers, whichever is lower.

UNLESS OFFEROR INDICATES OTHERWISE, FREE TIME WILL BE CONSIDERED UNLIMITED.

(c) **DETENTION COSTS.** Detention costs do not apply to tank wagon deliveries. Detention costs will be the sole responsibility of the activity incurring them. Any invoices for detention costs will be forwarded directly to the activity receiving the product.

(DFSC 52.212-9F19)

F17 F.O.B. ORIGIN (JUN 1988)

(a) The term **f.o.b. origin**, as used in this clause, means free of expense to the Government delivered--

(1) On board the indicated type of conveyance of the carrier (or of the Government, if specified) at a designated point in the city, county, and State from which the shipment will be made and from which line-haul transportation service (as distinguished from switching, local drayage, or other terminal service) will begin;

(2) To, and placed on, the carrier's wharf (at shipside, within reach of the ship's loading tackle when the shipping point is within a port area having water transportation service) or the carrier's freight station;

(3) To a U.S. Postal Service facility; or

(4) If stated in the solicitation, to any Government-designated point located within the same commercial zone as the f.o.b. origin point specified in the contract (commercial zones are prescribed by the Interstate Commerce Commission at 49 CFR 1048).

(b) The Contractor shall--

(1) (i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment in conformance with carrier requirements to protect the goods and to ensure assessment of the lowest applicable transportation charge;

(2) (i) Order specified carrier equipment when requested by the Government; or

(ii) If not specified, order appropriate carrier equipment not in excess of capacity to accommodate shipment;

(3) Deliver the shipment in good order and condition to the carrier, and load, stow, trim, block, and/or brace carload or truckload shipment (when loaded by the Contractor) on or in the carrier's conveyance as required by carrier rules and regulations;

(4) Be responsible for any loss of and/or damage to the goods--

(i) Occurring before delivery to the carrier;

(ii) Resulting from improper packing and marking; or

(iii) Resulting from improper loading, stowing, trimming, blocking, and/or bracing of the shipment, if loaded by the Contractor on or in the carrier's conveyance;

(5) Complete the Government bill of lading supplied by the ordering agency or, when a Government bill of lading is not supplied, prepare a commercial bill of lading or other transportation receipt. The bill of lading shall show--

(i) A description of the shipment in terms of the governing freight classification or tariff (or Government rate tender) under which lowest freight rates are applicable;

(ii) The seals affixed to the conveyance with their serial numbers or other identification;

(iii) Lengths and capacities of cars or trucks ordered and furnished;

(iv) Other pertinent information required to effect prompt delivery to the consignee, including name, delivery address, postal address and ZIP code of consignee, routing, etc.;

(v) Special instructions or annotations requested by the ordering agency for commercial bills of lading; e.g., (A) "to be converted to a Government bill of lading," or (B) "this shipment is the property of, and the freight charges paid to the carrier(s) will be reimbursed by, the Government"; and

(vi) The signature of the carrier's agent and the date the shipment is received by the carrier; and

(6) Distribute the copies of the bill of lading, or other transportation receipts, as directed by the ordering agency.

F17 CONT'D

(c) These Contractor responsibilities are specified for performance at the plant or plants at which the supplies are to be finally inspected and accepted, unless the facilities for shipment by carrier's equipment are not available at the Contractor's plant, in which case the responsibilities shall be performed f.o.b. the point or points in the same or nearest city where the specified carrier's facilities are available; subject, however, to the following qualifications:

(1) If the Contractor's shipping plant is located in the State of Alaska or Hawaii, the Contractor shall deliver the supplies listed for shipment outside Alaska or Hawaii to the port of loading in Alaska or Hawaii, respectively, as specified in the contract, at Contractor's expense, and to that extent the contract shall be "f.o.b. destination."

(2) Notwithstanding subparagraph (c)(1) of this clause, if the Contractor's shipping plant is located in the State of Hawaii, and the contract requires delivery to be made by container service, the Contractor shall deliver the supplies, at Contractor's expense, to the container yard in the same or nearest city where seavan container service is available.

(FAR 52.247-29)

F17.04 CONDITIONS OF RAIL DELIVERIES (COAL) (DFSC JUL 1992)

When the Schedule calls for delivery by railcar, the following conditions shall apply:

(a) Each shipment from a single loading point shall be considered as one bulk lot as defined under the QUALITY PROVISIONS clause and shall be represented by one gross sample if the lot is no greater in quantity than 1,000 tons.

(b) The gross sample shall be collected from the entire lot, prepared for analysis and tested to determine chemical and physical properties in accordance with the QUALITY PROVISIONS clause.

(c) The analytical test report and DD Form 250 pursuant to the CONTRACTOR INSPECTION RESPONSIBILITIES clause shall be forwarded to the destination by First Class U.S. Mail to arrive prior to or concurrent with arrival of the shipment.

(d) No shipment will be made of coal that does not conform to the minimum specification quality required unless the Contracting Officer (CO) grants permission to ship.

(e) Permission to ship will be requested by the Contractor or its authorized representative, and, in the event the CO grants such permission, the DD Form 250 will be annotated with the following statement:

"Test results at source indicate their shipment of _____ cars does not meet minimum Specification Quality Required: e.g., Ash _____% in lieu of Spec. Limit of _____. DFSC (CO) grants permission to ship subject to the rights reserved by the Government under this contract. Reference telecon CO/DFSC-QE on _____ (date)."

(f) The receiving activity will inspect each shipment in accordance with the DESTINATION INSPECTION AND ACCEPTANCE clause. Each shipment may be sampled and tested in accordance with the SAMPLING AND EVALUATION clause.

F17.05 CONDITIONS OF TRUCK DELIVERIES (COAL) (DFSC JUL 1992)

When the schedule calls for delivery by truck, the following conditions shall apply:

(a) Each day's loading and shipping from a single loading point shall be from one or more bulk lots as defined under the QUALITY PROVISIONS clause. Each bulk lot shall be no greater in quantity than 1,000 tons, assigned a lot number, segregated, and isolated and be represented by one gross sample.

(b) The gross sample shall be collected from the entire lot, prepared for analysis and tested to determine chemical and physical properties in accordance with the QUALITY PROVISIONS clause. The analytical test report shall reference the lot number it represents.

(c) The analytical test report and DD Form 250, pursuant to the CONTRACTOR INSPECTION RESPONSIBILITIES clause, shall be forwarded to the destination by First Class U.S. Mail within 48 hours of completion of loading and shipping.

(d) No shipment will be loaded or shipped from lots that do not conform to the minimum specification quality required unless the Contracting Officer (CO) grants permission to ship.

(e) Permission to ship will be requested by the Contractor or its authorized representative, and, in the event the CO grants such permission, the DD Form 250 will be annotated with the following statement:

"Test results at source indicate this shipment of _____ trucks does not meet minimum Specification Quality Required: e.g., Ash _____% in lieu of Spec. Limit of _____. DFSC (CO) grants permission to ship subject to the rights reserved by the Government under this contract. Reference telecon CO/DFSC-QE on _____ (date)."

F17.05 CONT'D

(f) The receiving activity at the destination will inspect each truck in accordance with the DESTINATION INSPECTION AND ACCEPTANCE clause. Each shipment may be sampled and tested in accordance with the SAMPLING AND EVALUATION clause.

F17.06 CONDITIONS FOR DELIVERIES BY MULTIPLE CONVEYANCES (COAL) (DFSC OCT 1993)

When the Schedule calls for delivery by barge/truck or barge/railcar shipments, the following conditions shall apply:

- (a) Sampling will be performed at the closest feasible site prior to delivery to the customer.
- (b) Product shall be represented by a gross sample. A gross sample shall be considered one bulk lot as defined under the QUALITY PROVISIONS clause.
 - (1) The coal will be sampled in accordance with ASTM D 2234. Increment collection will be Condition A (Stopped-belt cut) or Condition B (Full-stream cut).
 - (2) The number of increments will be in accordance with Table 2 of ASTM D 2234 for lot size up to and including 1,000 tons.
 - (3) For lot size of over 1,000 tons, the number of increments, as stated in Table 2, will be increased as follows:

$$N2 = N1 \sqrt{\frac{\text{lot size tons}}{1,000 \text{ tons}}}$$

where: N1 = number of increments specified in Table 2

N2 = number of increments required

For example, a 1500-ton lot will require a minimum of 43 increments of 6 lbs. minimum weight each and be systematically collected from the entire lot.

- (c) The gross sample will be prepared for analysis and tested to determine chemical and physical properties in accordance with the QUALITY PROVISIONS clause.
- (d) Each barge load will be assigned a shipment number to be referenced on the analytical test report and the DD Form 250.
- (e) The analytical test report and DD Form 250, pursuant to the CONTRACTOR INSPECTION RESPONSIBILITIES clause, shall be forwarded to the destination by First Class U.S. Mail within 48 hours of completion of loading and shipping.
- (f) No shipments will be made of coal that does not conform to the minimum specification quality required unless the Contracting Officer (CO) grants permission to ship.
- (g) Permission to ship will be requested by the Contractor or his authorized representative, and, in the event the CO grants such permission, the DD Form 250 will be annotated with the following statement:
 "Test results at source indicate this barge shipment number _____ does not meet Minimum Specification Required: e.g., Ash _____% in lieu of Spec. Limit of _____. DFSC (CO) grants permission to ship subject to the rights reserved by the Government under this contract. Reference telecon CO/DFSC-QE on _____ (date)."
- (h) All barge loads will be held in a segregated stockpile at the barge company's coal dock or other facility from which the trucks will be loaded.
- (i) The SHIPMENT AND ROUTING clause, paragraph (f), will prevail for each truckload delivered from the stockpile.
- (j) The WEIGHTS AND UNIT OF PURCHASE clause, paragraph (c), shall govern quantities delivered to the destination.
- (k) The receiving activity at the destination will inspect each truck in accordance with the DESTINATION INSPECTION AND ACCEPTANCE clause. Each shipment may be sampled and tested in accordance with the SAMPLING AND EVALUATION clause.

F18 F.O.B. DESTINATION (NOV 1991)

(a) The term "f.o.b. destination," as used in this clause, means--

(1) Free of expense to the Government, on board the carrier's conveyance, at specified delivery point where the consignee's facility (plant, warehouse, store, lot, or other location to which shipment can be made) is located; and

(2) Supplies shall be delivered to the destination consignee's wharf (if destination is a port city and supplies are for export), warehouse unloading platform, or receiving dock, at the expense of the Contractor. The Government shall not be liable for any delivery, storage, demurrage, accessorial, or other charges involved before the actual delivery (or "constructive placement" as defined in carrier tariffs) of the supplies to the destination, unless such charges are caused by an act or order of the Government acting in its contractual capacity. If rail carrier is used, supplies shall be delivered to the specified unloading platform of the consignee. If motor carrier (including "piggyback") is used, supplies shall be delivered to truck tailgate at the unloading platform of the consignee, except when the supplies delivered meet the requirements of Item 568 of the National Motor Freight Classification for "heavy or bulky freight." When supplies meeting the requirements of the referenced Item 568 are delivered, unloading (including movement to the tailgate) shall be performed by the consignee, with assistance from the truck driver, if requested. If the Contractor uses rail carrier or freight forwarded for less than carload shipments, the Contractor shall ensure that the carrier will furnish tailgate delivery, when required, if transfer to truck is required to complete delivery to consignee.

(b) The Contractor shall-

(1) (i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment in conformance with carrier requirements;

(2) Prepare and distribute commercial bills of lading;

(3) Deliver the shipment in good order and condition to the point of delivery specified in the contract;

(4) Be responsible for any loss of and/or damage to the goods occurring before receipt of shipment by the consignee at the delivery point specified in the contract;

(5) Furnish a delivery schedule and designate the mode of delivering carrier; and

(6) Pay and bear all charges to the specified point of delivery.

(FAR 52.247-34)

F21 CONTRACTOR NOTICE REGARDING LATE DELIVERY (DFSC APR 1968)

In the event the Contractor encounters difficulty in meeting performance requirements, or when it anticipates difficulty in complying with the contract delivery Schedule or date, it shall immediately notify the Contracting Officer, in writing, giving pertinent details; PROVIDED, however, that this data shall be informational only in character and that this provision shall not be construed as a waiver by the Government of any delivery Schedule or date or of any rights or remedies provided by law or under this contract.

(DFSC 52.212-9F12)

F62 SHIPMENT AND ROUTING (COAL) (DFSC NOV 1995)

(a) Upon receipt of a delivery order, the Contractor shall immediately proceed to make shipment, in the quantity stated, to the installation specified, at the rate of delivery required, and by the method specified in the Schedule. This does not affect the Contractor's obligations concerning quality inspection by the Government Quality Representative.

(b) If the coal is to be delivered f.o.b. railroad cars at the mine, the Contractor shall ship the coal under commercial shipping documents.

(1) When shipped under commercial bills of lading, such bills of lading shall be marked "Government Property, Collect" and shall be mailed promptly to the consignee for conversion to Government bills of lading at destination.

(2) When shipped under commercial documents other than commercial bills of lading, such documents shall be marked "Government Property, Collect." The carrier's destination freight bills will be converted to Government bills of lading at destination.

(3) Routing instructions for f.o.b. origin contracts will be furnished to the Contractor by the Alternative Fuels Directorate of the Defense Fuel Supply Center.

F62 CONT'D

(d) If the delivery schedule should require shipment by the Contractor prior to his receipt of routing instructions as outlined in (c) above, the Contractor shall immediately proceed with shipments via the cheapest and most direct route to the receiving activity at the railhead and by the delivering railroad designated in the contract or in the preliminary wire or letter notice of award.

(e) The Contractor shall indicate on all shipping documents and notices of shipments all ~~name~~ locations, and shipping points of the mines from which the coal originates, the contract number, the quantity, and the exact size of the coal shipped. For example, if the coal shipped has a size of 1 1/4" x 1/4", then this size is to be shown on all shipping documents.

(f) With all truck deliveries, regardless of point of weighing, the Contractor shall furnish a statement setting forth the name and location of the mine from which the coal was shipped.

F73.01 OIL TREATMENT/FREEZE PROOFING OF COAL (DFC JUN 1991)

(a) OIL TREATMENT refers to the preparation of coal using a petroleum based product to achieve effective dust control. FREEZE PROOFING refers to the preparation of coal to reduce coal from freezing together or to the conveyance which would restrict the product flow.

(b) When called for under the Schedule, coal will be oil treated/freeze proofed using a spray technique permitting a total uniform application. The medium will be applied to the coal at the minimum amount of three quarts/ton, and will be accomplished immediately prior to loading into the conveyance or stockpiling at the tipple location. However, when multiple transfers or transportation modes occur during shipment, treatment will be applied immediately prior to stockpiling or loading at the specified shipping point.

(c) The oil treatment medium may be either heating oil, diesel fuel, or lubricating oil. For freeze proofing, the medium may be any commercially available product designed for such purposes and prepared according to manufacturer's direction. When both oil treatment and freeze proofing are called for in a Schedule, the freeze proofing method may be used to satisfy both requirements provided that a petroleum-based product is used.

(d) Used oils are not acceptable for coal treating unless the oil meets the EPA specifications for used oil that may be burned in nonindustrial boilers/furnaces. The Used Oil Fuel specification is as follows:

<u>CONSTITUENT/PROPERTY</u>	<u>ALLOWABLE LEVEL</u>
Arsenic	5 ppm maximum
Cadmium	2 ppm maximum
Chromium	10 ppm maximum
Lead	100 ppm maximum
Total Halogens	1000 ppm maximum
Flash Point	100 deg F minimum

(See Title 40 of the Code of Federal Regulations, Part 266.) The Contractor must retain on file laboratory test results showing compliance with the EPA requirements.

(e) The Contractor certifies that the treatment medium meets all Federal, State, and local EPA requirements at the burner location.

(f) The offeror shall submit, with the offer, the name and address of the company ~~supplying~~ applying the treatment medium. This information shall be supplied on the following lines:

(g) The Contractor shall notify the Contracting Officer if the supplier of the treatment medium is changed.

F104 VARIATION IN QUANTITY (COAL) (DFSC NOV 1991) (DEVIATION)

(a) The Government will not accept any variation from the quantity specified ~~in a particular order~~ under any item of the Schedule except to the extent of that quantity required to fill that car or truck which is the last car or truck necessary to complete the contract or order.

(b) If coal is delivered in excess of the variations in quantity specified in (a) above, the Contractor shall remove such overshipment at its own expense.

F106.01 WEIGHTS AND UNITS OF PURCHASE (COAL) (DFSC APR 1990)

Unless otherwise stated in the Schedule, the unit of purchase shall be the net ton of 2,000 pounds. Payment hereunder shall be on the basis of weight determined as follows:

(a) (1) **FOR ALASKA.** The railroad scale weights at the usual point of weighing will govern payment except when belt scales are available at destination. When belt scales are available at destination, belt scale weight shall be used for payment.

(2) **ALL OTHERS.** Regardless of the delivery point, if the coal is transported to destination by rail, the railroad scale weights at the usual point of weighing will govern payment except when statutes or regulations require that shipments be reweighed at destination in which event the weight so determined shall govern.

(b) Regardless of the delivery point, if the coal is transported part way to destination by vessel or barge, the weights furnished by the railroad at the loading pier will be the basis on which payment shall be made.

(c) Regardless of the delivery point, if the coal is transported to destination by truck and the Government has adequate scales at the destination, each truckload will be weighed by the Government at the destination. In the event the coal is weighed at destination, the Government shall furnish the Contractor with a certificate showing the gross, tare, and net weight of each truckload. Whether or not adequate scales are available at the destination, the Contractor shall furnish the Government with a certified licensed weighmaster's certificate of weight for each truckload. In the latter instance, the coal shall be weighed on the scales nearest the destination which are operated by, or under the jurisdiction of, a certified weighmaster. Invoices submitted for payment shall be calculated by using the Contractor's adjusted net weight or the Government's net weight, whichever is less.

(d) If washed coal is to be delivered f.o.b. cars at the mine, the Contractor shall notify the scale agents when the cars are forwarded to the scales for weighing and waybilling as to which cars contain wet coal in order to assure that the Government will receive tariff deductions. This shall apply only where tariffs provide for weight allowances on washed coal.

(e) Weights of coal purchased under conditions not covered by the foregoing shall be determined by agreement between the Contracting Officer and the Contractor, based on prevailing commercial practice.

(DFSC 52.247-9F10)

F108 DELIVERY OF EXCESS QUANTITIES (SEP 1989)

The Contractor is responsible for the delivery of each item quantity within allowable variations, if any. If the Contractor delivers and the Government receives quantities of any item in excess of the quantity called for (after considering any allowable variation in quantity), such excess quantities will be treated as being delivered for the convenience of the Contractor. The Government

may retain such excess quantities up to \$250 in value without compensating the Contractor therefor, and the Contractor waives all right, title, or interests therein. Quantities in excess of \$250 will, at the option of the Government, either be returned at the Contractor's expense or retained and paid for by the Government at the contract unit price.

(FAR 52.211-17)

CONTRACT ADMINISTRATION

G3 INVOICE NUMBERING REQUIREMENTS (DFSC DEC 1994)

Each invoice submitted for payment under this contract shall be identified by an individual invoice number. The number shall not be duplicated on subsequent invoices. Duplicate invoice numbers or invoices that do not include numbers may be rejected. For invoices submitted under the ELECTRONIC SUBMISSION OF INVOICES FOR PAYMENT clause, invoice numbers are limited to five characters.

G9.06-1 ADDRESS TO WHICH REMITTANCE SHOULD BE MAILED (DFSC FEB 1996)

Offeror shall indicate below the complete mailing address (including the nine-digit zip code) to which remittances should be mailed if such address is other than that shown in Block 17a (Standard Form (SF) 1449). In addition, if offeror did not incorporate its nine-digit zip code in the address shown in Block 17a of the SF 1449, the offeror shall enter it below:

(a) Payee Name (Contractor): _____
(DO NOT EXCEED 25 CHARACTERS)

(b) Check Remittance Address:

(DO NOT EXCEED 30 CHARACTERS PER LINE)

(c) Recipient Name (authorized individual representing the Contractor/courier for check pick-up).

Leave blank if check is to be mailed

(DO NOT EXCEED 25 CHARACTERS)

(d) Narrative Information (special instructions).

(DO NOT EXCEED 153 CHARACTERS)

CONTRACT CLAUSES

I2.05 CHANGES - FIXED-PRICE (AUG 1987)

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(1) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications.

(2) Method of shipment or packing.

(3) Place of delivery.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

(c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.

(e) Failure to agree to any adjustment shall be a dispute under the DISPUTES clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

(FAR 52.243-1)

I11.01 ADMINISTRATIVE COST OF DEFAULT (DFSC JUN 1990)

If this contract is terminated for default, in whole or in part, the Government will incur administrative costs for the default action of the supplies or services so terminated. The Contractor and the Government expressly agree that the Contractor shall pay, as a minimum, an administrative fee of \$500 for each termination action as a result of its default. "Termination action" means the termination for default of any order (or group of orders terminated together), item (or group of items terminated together), or the entire contract. These charges are in addition to any excess costs of repurchase, as provided in the DEFAULT clause of the contract, or any other remedies or damages resulting from such default.

(DFSC 52.212-9F05)

I11.04 BANKRUPTCY (JUL 1995)

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the Contracting Officer responsible for administering the contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government contract numbers and contracting offices for all Government contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

(FAR 52.242-13)

I27 GRATUITIES (APR 1984)

(a) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Contractor, its agent, or another representative--

(1) Offered or gave a gratuity (e.g., entertainment or gift) to an officer, official, or employee of the Government; and

(2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

(b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.

(c) If this contract is terminated under paragraph (a) above, the Government is entitled--

(1) To pursue the same remedies as in a breach of the contract; and

I27 CONT'D

(2) In addition to any other damages provided by law, to exemplary damages of not less than 3 nor more than 10 times the cost incurred by the Contractor in giving gratuities to the person concerned, as determined by the agency head or a designee. (This subparagraph (c)(2) is applicable only if this contract uses money appropriated to the Department of Defense.)

(d) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract (FAR 52.203-3)

I28.01 FEDERAL, STATE, AND LOCAL TAXES (DFSC NOV 1993) (DEVIATION)

(a) As used in this clause--

"Contract date" means the date set for bid opening or, if this is a negotiated contract or a modification, the date set for best and final offers.

"All applicable Federal, State, and local taxes and duties" means all taxes and duties that the taxing authority, including Puerto Rico and other possessions of the United States, are imposing and collecting on the transactions or property covered by this contract pursuant to written ruling or regulation in effect on the contract date.

"After-imposed tax" means any new or increased Federal, State, or local excise tax or duty, except social security or other employment taxes, on the transactions or property covered by this contract that the Contractor is required to pay or bear the burden of as the result of legislative, judicial, or administrative action taking effect after the contract date.

"After-relieved tax" means any amount of Federal, State, or local excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear the burden of, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.

(b) The contract price includes all applicable Federal, State, or local taxes and duties, except as may be otherwise provided. (For petroleum contracts, see the FEDERAL, STATE, AND LOCAL TAXES EXCLUDED FROM CONTRACT PRICE clause.)

(c) The contract price shall be increased by the amount of any after-imposed tax if the Contractor states in writing that the contract price does not include any contingency for such tax.

(d) The contract price shall be decreased by the amount of any after-relieved tax.

(e) The contract price shall also be decreased by the amount of any excise tax or duty, except social security or other employment taxes, that the Contractor is required to pay or bear the burden of, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer.

(f) The Contractor shall promptly notify the Contracting Officer of all matters relating to any excise tax or duty that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs.

(g) The Government shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Contractor requests such evidence and a reasonable basis exists to sustain the exemption.

(DFSC 52.229-9F02)

I33 INTEREST (JAN 1991)

(a) Notwithstanding any other clause of this contract, all amounts, except amounts that are repayable and which bear interest under a PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA clause, that become payable by the Contractor to the Government under this contract (net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481) shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in paragraph (b) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(b) Amounts shall be due at the earliest of the following dates:

(1) The date fixed under this contract.

I33 CONT'D

(2) The date of the first written demand for payment consistent with this contract, including any demand resulting from a default termination.

(3) The date the Government transmits to the Contractor a proposed supplemental agreement to confirm completed negotiations establishing the amount of debt.

(4) If this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by contract modification.

(c) The interest charge made under this clause may be reduced under the procedures prescribed in 32.614-2 of the Federal Acquisition Regulation in effect on the date of this contract.

(FAR 52.232-17)

I84 REQUIREMENTS (OCT 1995)

(a) This is a requirements contract for the supplies or services specified, and effective for the period stated in the Schedule. The quantities of supplies or services specified in the Schedule are estimates only and are not purchased by this contract. Except as this contract may otherwise provide, if the Government's requirements do not result in orders in the quantities described as "estimated" or "maximum" in the Schedule, that fact shall not constitute the basis for an equitable price adjustment.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the ORDERING clause. Subject to any limitations in the ORDER LIMITATIONS clause or elsewhere in this contract, the Contractor shall furnish to the Government all supplies or services specified in the Schedule and called for by orders issued in accordance with the ORDERING clause. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(c) Except as this contract otherwise provides, the Government shall order from the Contractor all the supplies or services specified in the Schedule that are required to be purchased by the Government activity or activities specified in the Schedule.

(d) The Government is not required to purchase from the Contractor requirements in excess of any limit on total orders under this contract.

(e) If the Government urgently requires delivery of any quantity of an item before the earliest date that delivery may be specified under this contract, and if the Contractor will not accept an order providing for the accelerated delivery, the Government may acquire the urgently required goods or services from another source. Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; PROVIDED, that the Contractor shall not be required to make any deliveries under this contract after 31 MAY 1998.

(FAR 52.216-21)

I84.01 REQUIREMENTS (SET-ASIDE) (ALT III) (OCT 1995)

(a) This is a requirements contract for the supplies or services specified, and effective for the period stated in the Schedule. The quantities of supplies or services specified in the Schedule are estimates only and are not purchased by this contract. Except as this contract may otherwise provide, if the Government's requirements do not result in orders in the quantities described as "estimated" or "maximum" in the Schedule, that fact shall not constitute the basis for an equitable price adjustment.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the ORDERING clause. Subject to any limitations in the ORDER LIMITATIONS clause or elsewhere in this contract, the Contractor shall furnish to the Government all supplies or services specified in the Schedule and called for by orders issued in accordance with the ORDERING clause. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(c) The Government's requirements for each item or subitem of supplies or services listed in the SET-ASIDE QUANTITIES clause are being purchased through one non-set-aside contract and one set-aside contract. Therefore, the Government shall order from each Contractor approximately one-half of the total supplies or services specified in the Schedule that are required to be purchased by the specified Government activity or activities. The Government may choose between the set-aside Contractor and the non-set-aside Contractor in placing any particular order. However, the Government shall allocate successive orders, in accordance with its delivery requirements, to maintain as close a ratio as is reasonably practicable between the total quantities ordered from the two Contractors.

I84.01 CONT'D

(d) The Government is not required to purchase from the Contractor requirements in excess of any limit on total orders under this contract.

(e) If the Government urgently requires delivery of any quantity of an item before the earliest date that delivery may be specified under this contract, and if the Contractor will not accept an order providing for the accelerated delivery, the Government may acquire the urgently required goods or services from another source.

(f) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; PROVIDED, that the Contractor shall not be required to make any deliveries under this contract after 31 MAY 1998.

(FAR 52.216-21/Alt III)

I85 ORDERING (MULTIPLE AWARDS) (DFSC AUG 1990)

In the event multiple awards to two or more suppliers are made for any one item, the Government may choose between any of the Contractors in placing any particular order. However, the Government will make every effort to allocate successive orders to maintain as close a balance as is reasonably practicable between the total quantities ordered from all Contractors.

(DFSC 52.216-9F13)

I86.02 DELIVERY-ORDER LIMITATIONS (COAL) (DFSC SEP 1985)

(a) MINIMUM ORDER. When the Government requires supplies or services covered by this contract in an amount of less than 50 tons, the Government is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or services under the contract.

(b) MAXIMUM ORDER. The Contractor is not obligated to honor any order for a single item in excess ~~of~~ of Schedule) net tons per month.

(c) Since this is a requirements contract, the Government is not required to order a part of any one requirement from the Contractor if that requirement exceeds the maximum order limitations in (b) above.

(d) Notwithstanding (b) and (c) above, the Contractor shall honor any order exceeding the maximum order limitations in (b) above, unless that order (or orders) is returned to the ordering office within five days after issuance, with written notice stating the Contractor's intent not to ship the item (or items) called for and the reasons. Upon receiving this notice, the Government may acquire the supplies or services from another source.

(DFSC 52.216-9F04)

I171.07 LIQUIDATED DAMAGES - SUBCONTRACTING PLAN (OCT 1995)

(a) **Failure to make a good faith effort to comply with the subcontracting plan** as used in this subpart, means a willful or intentional failure to perform in accordance with the requirements of the subcontracting plan approved under the clause in this contract entitled SMALL, SMALL DISADVANTAGED, AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN, or willful or intentional action to frustrate the plan.

(b) If, at contract completion, or in the case of a commercial products plan, at the close of the fiscal year for which the plan is applicable, the Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph (c) of this clause that the Contractor failed to make a good faith effort to comply with its subcontracting plan, established in accordance with the clause in this contract entitled SMALL, SMALL DISADVANTAGED, AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN, the Contractor shall pay the Government liquidated damages in an amount stated. The amount of probable damages attributable to the Contractor's failure to comply, shall be an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal or, in the case of a commercial products plan, that portion of the dollar amount allocable to Government contracts by which the Contractor failed to achieve each subcontract goal.

(c) Before the Contracting Officer makes a final decision that the Contractor has failed to make such good faith effort, the Contracting Officer shall give the Contractor written notice specifying the failure and permitting the Contractor to demonstrate

I171.07 CONT'D

what good faith efforts have been made. Failure to respond to the notice may be taken as an admission that no valid explanation exists. If, after consideration of all the pertinent data, the Contracting Officer finds that the Contractor failed to make a good faith effort to comply with the subcontracting plan, the Contracting Officer shall issue a final decision to that effect and require that the Contractor pay the Government liquidated damages as provided in paragraph (b) of this clause.

(d) With respect to commercial products plans; i.e., company-wide or division-wide subcontracting plans approved under paragraph (g) of the clause in this contract entitled SMALL, SMALL DISADVANTAGED, AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN, the Contracting Officer of the agency that originally approved the plan will exercise the functions of the Contracting Officer under this clause on behalf of all agencies that awarded contracts covered by that commercial product plan.

(e) The Contractor shall have the right of appeal, under the clause in this contract entitled DISPUTES, from any final decision of the Contracting Officer.

(f) Liquidated damages shall be in addition to any other remedies that Government may have.

(FAR 52.219-16)

I190.04 MATERIAL SAFETY DATA SHEETS -- COMMERCIAL ITEMS (DFSC MAR 1996)

(a) The apparently successful offeror agrees to submit, for each item prior to award, a Material Safety Data Sheet, meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all items to be delivered under this contract. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the apparently successful offeror is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful offeror being considered nonresponsible and ineligible for award.

(b) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph (a) of this clause, the Contractor shall promptly notify the Contracting Officer and resubmit the data.

(c) The Contractor shall submit MSDSs to the Contracting Officer. MSDSs must cite the solicitation number, the applicable CAGE code of the manufacturer, and, where so identified, the National Stock Number (NSN).

(d) The offeror need not submit a duplicate MSDS for a product for which the offeror has submitted an MSDS within the past five years. The MSDS of record must fully comply with the latest revision of FED-STD-313, and the data on the MSDS must still be current and complete. Should the description/composition of the product offered differ in any area specified on a previously submitted MSDS, a new MSDS is required.

I209.12 EXTENSION PROVISIONS (COAL) (DFSC MAY 1996)

(a) The DFSC Contracting Officer reserves the right to unilaterally extend this contract on the same terms and conditions one or more times for a total of no more than three months. Notice of contract extension will be furnished to the Contractor

30 days prior to expiration of this contract or any extension thereof. However, nothing in this clause precludes the Contractor from agreeing to an extension of the contract if the DFSC Contracting Officer fails to issue the notice within the 30 day time frame.

(b) The foregoing extension may be exercised by the DFSC Contracting Officer where continued performance is required until a follow-on contract is awarded or, in the event a follow-on contract has been awarded, until a succeeding Contractor is positioned to commence performance.

(c) Extension of this contract shall be considered to have been accomplished at the time the DFSC Contracting Officer provides written notification to the Contractor by facsimile or by mail.

I209.13 OPTION TO INCREASE QUANTITY (COAL) (DFSC JUN 1996)

The Ordering Officer, by written notice to the Contractor, may increase the quantity of supplies called for herein by an amount not to exceed 10 percent at any time during the specified ordering period.

I211 ORDERING (OCT 1995)

(a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the Schedule. Such orders may be issued from 01 MAY 1997 through 30 APRIL 1998

(b) All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order or task order and this contract, the contract shall control.

(c) If mailed, a delivery order or task order is considered "issued" when the Government deposits the order in the mail. Orders may be issued orally by facsimile, or by electronic commerce methods only if authorized in the Schedule.

(FAR 52.216-18)

I236 NOTICE OF TOTAL SMALL BUSINESS SET-ASIDE (JUL 1996)

(a) **DEFINITION. Small business concern** as used in this clause, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the size standards in this solicitation.

(b) **GENERAL.**

(1) Offers are solicited only from small business concerns. Offers received from concerns that are not small business concerns shall be considered nonresponsive and will be rejected.

(2) Any award resulting from this solicitation will be made to a small business concern.

(c) **AGREEMENT.** A small business concern submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States. The term "United States" includes its territories and possessions, the Commonwealth of Puerto Rico, the trust territory of the Pacific Islands, and the District of Columbia. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed \$25,000, a small business concern may furnish the product of any domestic firm. This paragraph does not apply in connection with construction or service contracts.

(FAR 52.219-6)

I237.03 NOTICE OF EVALUATION PREFERENCE FOR SMALL DISADVANTAGED BUSINESS CONCERNS (APR 1994)

(a) **DEFINITIONS.**

(1) **Historically black colleges and universities** as used in this clause, means institutions determined by the Secretary of Education to meet the requirements of 34 CFR Section 608.2. The term also means any nonprofit research institution that was an integral part of such a college or university before 14 November 1986.

(2) **Minority institutions** as used in this clause, means institutions meeting the requirements of paragraphs (3), (4), and (5) of Section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1135d-5(3)). The term also includes Hispanic-serving institutions as defined in Section 316(b)(1) of such Act (20 U.S.C. 1059c(b)(1)).

(3) **Small disadvantaged business concern** as used in this clause, means a small business concern, owned and controlled by individuals who are both socially and economically disadvantaged, as defined by the Small Business Administration at 13 CFR Part 124, the majority of earnings of which directly accrue to such individuals. This term also means a small business concern owned and controlled by an economically disadvantaged Indian tribe or Native Hawaiian organization which meets the requirements of 13 CFR 124.112 or 13 CFR 124.113, respectively.

(4) **United States** as used in this clause, means the United States, its territories and possessions, the Commonwealth of Puerto Rico, the U.S. Trust Territory of the Pacific Islands, or the District of Columbia.

(b) **EVALUATION PREFERENCE.**

(1) Offers will be evaluated by adding a factor of 10 percent to the price of all offers, except--

(i) Offers from small disadvantaged business concerns, which have not waived the preference;

(ii) Offers from historically black colleges and universities or minority institutions, which have not waived the preference;

(iii) Otherwise successful offers of--

I237.03 CONT'D

(A) Eligible products under the Trade Agreements Act when the dollar threshold for application of the Act is exceeded;

(B) Qualifying country end products (as defined in the Defense Federal Acquisition Regulation Supplement clause at 252.225-7001, Buy American Act and Balance of Payments Program); and

(iv) Offers where application of the factor would be inconsistent with a Memorandum of Understanding or other international agreement with a foreign government.

(2) The 10 percent factor will be applied on a line item by line item basis or to any group of items on which award may be made. Other evaluation factors described in the solicitation will be applied before application of the 10 percent factor. The 10 percent factor will not be applied if using the preference would cause the contract award to be made at a price which exceeds the fair market price by more than 10 percent.

(c) WAIVER OF EVALUATION PREFERENCE.

A small disadvantaged business, historically black college or university, or minority institution offeror may elect to waive the preference, in which case the 10 percent factor will be added to its offer for evaluation purposes. The agreements in paragraph (d) do not apply to offers which waive the preference.

[] Offeror elects to waive the preference.

(d) AGREEMENTS.

(1) A small disadvantaged business concern, historically black college or university, or minority institution offeror, which did not waive the preference, agrees that in performance of the contract, in the case of a contract for--

(i) Services, except construction, at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern.

(ii) Supplies, at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern.

(iii) General construction, at least 15 percent of the cost of the contract, excluding the cost of materials, will be performed by employees of the concern.

(iv) Construction by special trade contractors, at least 25 percent of the cost of the contract, excluding the cost of materials, will be performed by employees of the concern.

(2) A small disadvantaged business, historically black college or university, or minority institution regular dealer submitting an offer in its own name agrees to furnish in performing this contract only end items manufactured or produced by small business concerns, historically black colleges or universities, or minority institutions in the United States.

(3) Upon request, a historically black college or university, or minority institution offeror will provide the Contracting Officer evidence that it has been determined to be an HBCU or MI by the Secretary of Education.

(DFARS 252.219-7006/ALT I)